REPORTS

AND

Pleas of Aſsiſes

At YORKE.

Held before ſeverall Judges in that Circuit,

WITH

Some Preſidents uſefull for Pleaders at the ASSISES:

Never engliſhed before.

Prov. 31. 8, 9.

Open thy mouth for the dumbe, Plead the Cauſe of the poor and needy.

Aug. lib. Confeſs. fo. 11.

Celeritas intelligendi, & diſputandi acumen donum Dei, ſed non inde ſacrificabam tibi; itaque mihi non ad uſum ſed perniciem.

LONDON,

Printed by *Ja. Fleſher*, for *W. Lee*, *D. Pakeman*, and *G. Bedell*, and are to be ſold at their ſhops in *Fleet-ſtreet*, 1651.

FH
MVSEVM
BRITANNICVM

To THE

Honble *Bolstred Whitlock* Esq; *Richard Keeble* Serjeant at Law, and *John Leisle* Esquire, Lords Commissioners of the Great Seal of *England*.

My Lords,

I Begge leave to plead before you one publike cause, as by your favours I have done some private ones; It is, my Lords, for the Laws of the Nation, and in them for the liberties of English men, and so for the Commonwealth. And this I shall do not for any great profit I reap by them, as *Demetrius* did in another case, but to do the Laws right: but it may be said of my gains there as one saies of the Athenian Edidies, they neither strengthened the Warre nor suffered it to die: Acts 19.

and it may intend thus [illegible] fo
Laws now [illegible] in a time
obloquie to them and their profe
ſors, of whom I yet hope they a
better Common wealths men, the
to ſhrink at a few reproachfu
terms or threats, by ſome ignor
*Cinædos, qui rem optimam peſſi
infamarunt*, and if otherwiſe it mig
be ſaid of ſuch faint hearted La
yers, as one doth of ſome Martyr
Delicati nimis Martyres, who cou
not bear a few hard words. I
ſhould go about to remember yo
Lops all the good and hono
which all ſorts of Authors have
recorded of their Laws, and t
professors of them, the Por
would be bigger then the houſe,
Epiſtle then the book; yet give
leave to mention a few to info
the ignorant who are the moſt
mies to law, [a] Peace cannot
without Laws, men would juſt
themſelvs by force, if Law and

Lexnon habet inimicum præter ignorantem.
[a] Coke Mag. Char. 161. Stat. Mailb. Preface Cokes Lit. 168.

on were not to doe it; they are
id *anima & vita Reipublicæ*, the
ery liberties of the people, a word
o much in use now; the Laws more
romote the good of a Common-
ealth, then riches and power, as
at Judge [b] determines; *Pauperi-*
s divitiæ, divitibus securitas, saies
e Oratour, *Judicium & Justitia*
stentant omnia. The Laws give
rotection to mens persons, estates,
onours, &c. the benefit whereof is
est known by the bad condition of
ch as for some crimes are put out
f its protection, who may be dealt
ithall as enemies, &c. So the go-
ernment by God himself set up
or his own people was by Laws,
nd they had their Lawyers, *Zenas*
he Lawyer, *Gamaliel* a Doctor, &c.
he very Turkes have their places
n severall great Cities, for study
f the Laws called Medresse, and se-
verall degrees are taken in that stu-
dy, the chief is called the *Mufftie*

Rastals Epistle to the Assises.

Tully lib. Offic. ob. 36. Heb. 1.

24 H. 8. F.N.B. 232. Stat. 15. Eliz.

Acts 5. 34. *Historia Turcica.*

who is in highest honour with the Grand Segnior, and sits covered in his presence. By our own Authors, the Lawyers are called *Sacerdotes*, and in Heraldry have the title of *Milites* as well as Souldiers, because saith the Author, *Vitam & patrimonium civium defendunt*. My Lords, the Morall Law had its rise from *Adams* sinne, and as vices did increase, so Laws which are rules and bounds to the Judge; and because Law is but *Materia finita circa infinita*, and where written Law failes, the Judge must have recourse *ad rationem jurisperiti, at non alterius etiam sapientissimi*, &c. This makes the Law so copious, because Reason where a rule and Law certain cannot be found, by turning and tossing it self, grows much dilated, and in such Cases judgements are given *ex æquo & bono* many times, and have a resemblance of arbitraries, and thence part of the Law (for

Fortes. 8.

Guillmi 29.

Cornelius Agrippa.

7 Rep. Case Calv.

Bodin 755.

for so it is called) Equity, which is a finer rule of Justice, proceeds. The Laws of this Nation extend themselvs to all arts, and learning, to things convenient and decorum, so it's rightly said, *Scientia copiosa & socialis*; Justice the daughter of Law is a curious grace, and therefore pictured with skales in its hand: all which I expatiate to shew the knowledge of the Law of England is not obtained without long and hard study, and great expence of time and means; whence the Lawyers are called Students, Apprentices, and Serjeants, all which import industry, &c. and after all done the best instructed Judges; though skilled well enough in those two now exploded languages of French and Latin, could never be so expert but knots in Law did rack their wits to find out a right reason of some Cases after Arguments at the Barre, and the best of

7 Rep. Case Calv: 4 Rep. 73.

reason long rung, and in the end, the Judges still of different opinions among themselves, and this mostly in expounding Acts of the Parliament made by three hundred Counsellors, as the use was, and yet fewer now are said to have the reason and wisdome of the Nation, &c. So that it is not the putting the Laws in barbarous French as it's termed, (which yet is as good as old *Chaucers* english) that maks the Laws dark, as long before these times hath been calumniated by perverse men, which law French a mean Latin Scholar may learn in two daies, but the difficult matter and hard study required to know those Laws is it. I confesse I have read a strain of wit that France is termed a Kingdome of blind men, because their Laws and religion are in Latin, and they speak French, but surely the blindnesse is of the mind for lack of Scholarship then otherwise, and it's beleeved the

Fortescue.

peo-

ople here wil not be clearer sigh-
d, by the turning Law books into
gliſh, but more Moon-eyed, wch
l occaſion greater danger; and
wiſe men of this Nation to a-
id that did think them better in
ther tongue then the Vulgar.
n all this, I humbly beſpeak
r Lordſhips, *Quibus jus & nor-*
loquendi, to have an indignati-
and to help what you can a-
nſt the calumniators of our
ws, and to ſtrengthen thoſe pil-
of government, ſome of which
e been ſhaken to the ſenſible
yet unknown danger of the
publick. My Lords, there was
ly a very bold Petition given
Judges ſitting in the upper
ch, that deſired two ſouldi-
might plead a Cauſe at that
re, but was with courage reje-
d, as againſt Law being mainte-
ce for ſuch to plead, a hatefull
me in our Law which is curious

Cokes Epiſtle to the 3. Rep.

32. H. 6. 25.

in

in it, ſome nere of kinne or intere
ſed in the thing, &c. but a ma
Fortes. 58. 11 E. 4. 3. own caſe he may plead if he can,
he may have ſage Gents *pro ſuo da*
Coke mag. Chart. 32 H. 6. 25 Old Entries 396. *do*, which is expounded approv
Lawyers, but not meer Laicks; a
it is holden a good iſſue in o
books in an Action for maint
nance that he who gave eviden
was *Homo laicus*, and not *homo c*
ſiliarius. At Committees contr
ry to this is done. I have ſeen
ordinary Officer ſouldier clap
his hat before a Judge of Aſſi
&c. upon the Bench. Talk hath b
of Lawyers gowns to be joyned
Scotch colours. I heard once
eminent Commander ſay he lik
not the Law ſhould be a trade, ſi
that it's ſaid in print to be peſti
Lib. Judges judged, fo. 115. rous, to have the Law reduced t
private mercenary trade. So
talke of taking up Inns of Co
for quarter, and much of this.
beſeech your Lordſhips, ſpeak

wo

ord againſt theſe things among
e Landfolke, and hold up the ho- Chaucer
ur of the Laws when ever occa- in John
n is; for it's a tryed truth that Gower.
orn and contempt of thing or
erſon is the harbinger of ruine,
ecially if winked at by authority,
ch more if countenanced; for
xt to pure religion, Laws are the
lars of a Common-wealth, to the
ich, that I may be indeed true
d fairhfull, I am put on to ſpeak
d you act; and if there were more
reproof in this, yet even that Prov. 27. 6.
ws faithfulneſſe, &c. I remem-
r when the Stage play of Ignora-
us was acted before King *James*,
ich did but flowt the Lawyers,
e Actors were threatned to be
led in queſtion for it, had not
at King who loved not Lawyers
erpoſed, of whom this Paradox
true, that he was a ſlave to rea-
n, and yet loved not the Laws
ich are but tryed reaſon, and the

Law-

Melan-
chons E-
thicks.

Lawyers Goddess, as it was said
the Peripateticks, but the ca
was, first, he was accounted a *Sc*
ler, but could not understand L
reason, which was a grief to him,
'tis to all men are reputed kno
ing to be ignorant of any thing, a
then the Laws are a measure
Prerogative which he admired, b
his Ancestor & Predecessor K. *H*
one of the sagest Kings of this N
tion was of another mind, who w
ready, saies the History, to gra
and countenance the Professors
the Law, and did govern his Su
jects by the Laws, and his laws
his Lawyers. It is reported of t
Scythians they judge their Caus
by Monomachie *Hac pro ratione*
tuntur, says the Author, but they
barbarous warriours, I hope no
here are of that persuasion. It w
an old article in our *Eires* to enqui
del tort fait al ley & al droit de coron
note the Law first, &c. My Lords

Cokes
Mag. Char.
63.

Bacons
History of
H. 7.

Mirror J.
68.

y

u can help it, suffer no law or
tence to passe against good old
ws, at least without hearing Ar-
ment first, that's to club them
d not reason them down, nor a-
nst good Ministers, who if they
guilty of nothing but what
ose three Electors of France said
the Councell of Trent of the Protestants of Germany, that they accused the corrupt manners & errors of the time, you may spare them they are the comfort of the oppressed. It was a high speech of one, in reference to preachers *satius est solem non lucere quam Chrysostomum non docere*. A man might wonder it should be so old a State Policy which is reported of King *Midas*, that he filled the Realm full of Sects of religion, by which he lived more in safety all his life, then by his Chivalrie. Let nothing be publickly practised against the known Laws, and then must not Reports be so dear, let it

Councell Trent. 41.

Justin. lib. 11.

ne-

Juſtin.

never be truly ſaid, if it lye in yo
power, what was of *Mithridates*,
ſuppreſſed the power of Kings b
not their faults; let none have ju
cauſe to ſay what was of *Attal*
King of *Aſia*, that in trimming h
Garden, he ſet for every hearb
weed, which was a very ſtrang
whimſie. It will be an honour t
the Parliament, and a ſign of
ſound body, when each member o
the body politick, their friends an
fellow-ſufferers. and for them by
benign influence grow as well a
the head, if that be bigger then its
due proportion and the lower parts
pine away, it's a ſign of the Ger-
mane evill, or ſome other diſtem-
per in the naturall body, what ever
it is in the Politick. Your Lord-
ſhips are in the front of the *Cuſtodes*
libertatum Angliæ, help aſſoon as
poſſible may be, that under the
pleaſing tearm of liberty, which
hath

See Parl. reſolution 1649. upon change of government.

Turkiſh Hiſtory.

th been alwais made use of in new dertakings, it may not be justly d what was of *Titus Flavius* the oman Generall, that under pre-nce of liberty he made the Greci-s clogge smoother, but as heavy as King *Philip* of *Macedon*. I have ken up too much of your Lops cious time, one word more and have done. I begge your pardon put your honourable Names in the Frontispice of this book, be-ing willing to take any occasion to ake off the suspicion of ingratitude hich was a crime inquirable in the Common-wealth of Persia. It may be you will accept this New-years gift. I conclude with that of *Pom-ey*, who being *Curator annonæ* for ome, when a storm arose at sea, as he was about to ship victualls ither, in a dearth, when some dvised him to linger and expect the seas calmer; No, saies he, it's ne-

Xenophon lib.

cess-

ceſſary for us to ſaile, not to live:
I in reference to what is herein u
tered for the Laws, a neceſſi
ſeems to ſpeak, but not to have t
favour of any are enemies to the
I humbly take leave ackno
ledging my ſelf

From my chamber in
the Inner Temple.
Jan. 1. 1650.

Your Honors much

obliged Orator

John Clayt

TO
he fair PLEADER.

Hen you have furnished the mind with sound principles of law, which requires eight or teme years hard study, you may perhaps by some friend be brought to plead a Clyents Cause at a Barre, to produce your strong Reasons, and bring the habit of Law-learning into act, the doctrine into use, which is most-ly seen in the art Placitory, which art is double, first, that in writing upon the Records, which shews the greatest judgement in the Law, and is mentioned with greatest honor of any part of it by most approved

Lit. Coke. Authors; The other part of the art is vocall, which pleads before the Judge to the Jury, and this is more hardly spoken on: he who hath the lowdest voice, most impudency and obstinacy, or can tell how to intreat the Judge most gently, and so perswade him, or else by making true and right things appear doubtfull perveit him, &c. that can use the Laws at their fancy, and turn them topsie turvie, is most skild and of greatest repute, at least amongst the Vulgar, this hath made this kind of pleading be called an ancient Art full of deceit, and that none well versed in it speaks or holds his peace for nothing, as once Aristodemus boasting to Demosthenes that he had a talent for

Cornelius Agrippa.

Osorius 34.

Cornelius Agrippa.

speaking, but saies he, I more hold my tongue. It is convenient th Plaintif and Defendant have ounsell, the one to obtain his right, e other that he be not over sorely nished; and different opinions are, hich of the twain, he for the Plainffe, or the other for the Defendant, eserves the more praise. In Tullies opinion, Laudabilius est defendere quam accusare; and another saies, Illustrissimum est famam & fortunas tenuium, &c. defendere & tueri: yet Marcus Cælius was tearmed a right hand Pleador, because he could doe it better against a man then for him, but he well determines the matter for both right and left hand Pleadors, that saies, Hæc Lib. Offic.

vera jurisprudentia est qu
Bodin. causas nec iniquis exceptio
bus obscurat, nec eorum fo
tunas insidiosè deprædatur
qui sibi jus petunt. *You may o*
serve in these pleadings at the As
ses, the Actions are most personals
so not so weighty as the old Assise
when Actions reall were more
use, yet these have their proper lea
ning, you may see the peevishnes
of Plaintifs in bringing many
these Actions for trifles put on b
the ignorance or avarice of Attu
nies, the Counsellor seldome hea
ing of one in forty Causes t
brought down to tryall. You may se
different opinions in the Judges, on
ruling the same Case clean contra
to the other, so feeble and crazie i

reaso

n at this day. You ſhall ſee Cau-
ipt in the head by quaint excep-
s taken by the Judges themſelvs
ch belonged to the Court above,
none ought to be urged to be
uite by many ſuch holes found in
Record: the Attornies fault
etimes ſubverts the Cauſe, other
etimes the Counſels miſpleading,
n the ſtraitneſſe of time to the
ge hath loſt the Cauſe, all con-
to the peoples torment. Plea- Cokes lit. 383.
give credit to theſe opinions of
Judges which are but ſudden,
arre onely as reaſon of Law will
uce thee, and our own Law is ſo
enuous to declare that no mans
hority ought to binde, and before
the Fren. Charron *ſaid,* Tout
opoſition humain au

tant de authority ql auter,
raison ne on fait le differen
and to do the contrary is to negle
mans own wisdome, and to be
like a beast to the inventions
thers in things are but fable
principles, if you beleeve Rawl
Fair Pleader, if thou canst mak
ny use of any reports here obser
which I have truly though with I
conica brevitate, *I have my*
My former essay in the little b
of Topicks, (which may be inlarg
being by some rejected, and some
cepted, some saying it was mad
Oxford, *some at the Inner-Te*
ple, I now own.

To conclude, you may see h
how to avoid a dangerous Jury
your Clyent, what evidence best

r him, how to keep the Judge
errule you not, so that if it be
our own fault, as too often it is
ar or favour, the Clyent may
his Cause so handled, as if he
laintiffe he may have his right,
f Defendant moderately puni-
or recompensed for his vexati-
aud such Pleaders the people

a tua, nullo, causa, tuente Ovid. Epist.
erit.

Farewell.

John Clayton.

RE-

ERRATA.

FOr *Damport* read *Davenport*. for *dem* *devise*. *Placito* 201. for *Case* read *C* *Placito* 137. *for without proof of the mony* read *of the arbitrement*. 149. for *seofail* read *fail*. *Placito* 125. for *Dawby* read *Danby*. *P* *to* 107. *Placito* 63. adde *the Plaintiffs b* *Placito* 41. omit *Damport and* r. *by the Judg*

REPORTS and PLEAS of Assises at *YORKE*.

Aug. 7°. Caroli *Assisa before* Damport *Chiefe Baron.*

Nalson against *Remington*. Ejectment.

A Speciall Verdict was found: That a Coppiholder of the Kings, was put out of possession, and during this outer, the Coppiholder made a surrender to *I. S.* who was Lessor of the Plaintiffe: and it was holden that nothing did passe by this Surrender, because the Tenant was out of Possession, at the time of the Surrender: yet it was holden no Disseisin could be, because the Freehold was in the King, who cannot be disseised. And then by the entree of the Lessor, who had made the surrender, his estate is regained. *Quod nota.* My selfe was of counsell with the Plaintiffe in this Case.

2. A Covenant is that *A.* and his As
nees shal enjoy black Acre. And
was joyned, that *A.* had enjoyed it. And
evidence was, that his Assignee did enjo
and payed his Rent to the Covenantee.
holden by the Judge, this doth not pr
the issue which was made straiter then n
for he might have enlarged his Plea to
Assignee also.

Lamberts case.

3. TRespas in white Acre lying in
dall cum Milthorpe, this is not
if they are two townes, and the Wit
did depose the later was also a towne
for that the Plaintiffe was *Nonsuit*.

4. ACtion upon a Promise and Dech
tion that the Defendant did As
and Promise that the Defendant would
sue the Plaintiffe. And the evidence
that he would forbear his Suit. And thi
the Judg doth suppose a Suit already beg
and so doth not maintaine the issue
upon this the Plaintiffe was *nonsuite*.

Ellis Caſe.

N Debt upon a Bond, *Non eſt factum* was pleaded, and upon producing it in ert it did appear to be made to the ntiffe and another, and holden, this now ſhewed cannot maintain this if- for the Plaintiffe that the bond was to him ſole, and though the truth he other was dead, that did not help, ee by me if the Law be not otherwiſe, uſe in this Caſe the Defendant ought ve prayed that the Bond might have entred upon Record *Verbatim*, and to have pleaded in Abatement and not ief that it was not his deed. And in Caſe, becauſe the Judge was doubtfull, s put upon the Jury, who found it for laintiffe. See *Whelpedales Caſe* 5 *Rep.*

Sir *John Ramſdens Caſe.*

N Treſpaſſe, and by the new aſſignment t was in three acres parcel of *Almond- Common* aforeſaid, adjoyning to ſuch a r, and holden inſufficient becauſe he not ſhew in what town this Common though it was ſhewed the three acres e in *Almondbury*, and part of the Com- n. And by the Judge this abuttall goes

to the Common, and not to the three ac
and by conſent a rule was to amend all,
by the Judge it will be amended thus,
ſay the three acres parcell of the Comm
of *Almondbury*, and adjoyning to ſuch
River, for this word, And, ſevers this ab
tall, that it will not goe to the Comm
but to the three acres, whereas by the f
mer Record and pleading it will.

Metcalfs Caſe.

7 *Alexander Metcalfe* Plaintiffe, t
Sheriffes of *York* Defendants in
Action upon the Caſe for taking inſufficie
bail of one arreſted by them upon a me
proces, and the Judge himſelf took ſe
rall exceptions againſt the Declaratio
1. For that it was not averred that the D
fendants knew the bail to be inſufficien
or that they did it malitiouſly, then
that it was layed in the Declaration th
there was a cuſtome there, that none oug
to be ſet at liberty being ſo arreſted, &
till good bail put in, &c. but did not
further, that in caſe the Officer did ſo th
ſhould pay the debt, &c. Then it was o
jected by the Defendants Counſell, th
the Plaintiffe had choſen to proceed again
the bail, and after did deſiſt and ſues th

Sh

ffs, which as was ſaid, could not be, terward it was put upon the Jury to re, and they found the Defendant . Enquire what the Law is touching ceptions aboveſaid.

Sir *Henry Anderſons Caſe.*

Treſpaſſe, with a *Continuando* &c. nd holden upon the evidence that it is eedfull to procure a reentry in Caſe ction is brought againſt the firſt treſ-, as it ought to be done where it is a- a ſtranger, as Feoffee, &c. of the firſt ſſor.

was holden in Caſe that if one is eſent, & ſaith to him whoſe goods are ined theſe words, If I was as thou I d reſcue the goods, that ſuch a perſon adjutor of the reſcous, and ſo guilty lf of it.

Farrer againſt *Eaſtwood.*

T was holden that if one conſent to Treſpaſſe done, he ſhall be charged as paſſor, as he ſhall that commands it done, ſo where a ſervant takes a ſheep amercement, and the Maſter agrees, equally liable to an Action of treſpaſſe

as the ſervavant. See 2 *H.* 7. & 8. aſſ. the Caſe of one *Waters* was 9 *Caroli* a ſame aſſiſes, which was the Caſe of ſheep aboveſaid, and agreed that tre did lie againſt both Maſter and ſerva the ſame Judge.

11 IN a pleading it was alledged Common was appurtenant to ſu meſſuage, and four acres of land, &c. the Judge did hold that this &c. did vi the whole pleading, for it ſignified ſome other thing was to which the C mon was appurtenant.

Townſley againſt *Ingham.*

12 DEbt againſt an executor of his wrong, who pleadeth that he n was executor, nor adminiſtred as an ex tor, it was holden in this caſe not to be whit materiall whether he hath any a or no; but to prove he hath adminiſtre any thing never ſo little in value and it charge him for the whole debt.

Broadheads Caſe.

13 B*Roadhead* Plaintiffe, *Beamond* fendant. Leas to trie a title con ſeverall parcels, and they are in the poſſ

ſeverall men, but the Leaſe is deli-
d in one parcell in the name of all, and
anks, it was held to paſſe all the lands,
gh no actuall entry was made upon
everall occupiers. And by their continu-
in poſſeſſion afterwards they ſhall be
Ejectors: but *Wainsford* held the
rary, and it ſeems the Law is with
sford. See 2 *Rep. Caſe Bettiſworth &*
mment. upon Litt. Coke 48, and diffe-
es where a poſſeſſion is vacant and
re not, and where to veſt a right in him
claims it, and where alſo to transfer an
te as in the preſent Caſe, there he muſt
the poſſeſſion firſt himſelf.

March 8. *Caroli Aſsiſa* the ſame Judge.

Sir *Francis Irelands Caſe.*

SIr *Francis Ireland* was Leſſor of the Plaintiffe in Ejectment founded upon *Elegit*, and upon that evidence it did ap-
r that the Father of Sir *Francis* had made
eſtate in truſt to raiſe portions for his
ldren, and five ſhillings onely or ſuch a
all ſum was payed by the Feoffee in truſt
land worth ten thouſand pounds, and
queſtion now was, whether theſe lands

being in the hands of Sir *Francis* ſon heir to the Feoffor ſhall be extended a judgement againſt Sir *Francis*, and th ther be but as a fraudulent conveyan this Caſe, and if ſo then the *Elegit* well ſerved by the Defendant, and a dict ſhall be againſt the Plaintiffe, but ſhall be good, then it is for the Plaint and holden the land not extendible, holden alſo that the deed of bargain ſale by the Father in truſt, (for ſuch a veyance it was for five ſhillings) may we inrolled the day it beareth date.

Mhoſeleys Caſe.

15 PReſcription was to digge fewel an ancient houſe, &c. And by Defendants counſell it was alledged there was a new Chimny built of late in houſe, to which the Preſcription was ma and upon this the Plaintiffe was nonſ becauſe when a new Chimney is built, Preſcription in ſuch caſe ought to be ſ ciall to ſuch a part of the houſe, and bou der it where the old Chimney was, and to the whole houſe, which will take in new Chimney, and that is more then Preſcription will warrant.

Atkin

Atkinſons Caſe.

A Traverſe being joyned upon title of Common, it was admitted that leaſe of all right and Common in that e ſhould be given in evidence, and nee- not to be pleaded as he might have e: on the the other part it was ſhewed Common did belong to land which was iled, which cannot paſſe by releaſe, no e then the land it ſelf to which &c. can, for that cauſe the iſſue in tail who was Plaintiffe here did recover.

Aldbrokes Caſe.

IN this Caſe depoſitions taken in the Dutchie and exemplified, were offered evidence but rejected becauſe the wer of the Defendant was not alſo ex- plified, ſo that it may appear to be the e matter and title, and by this it ſeems n they might have been allowed.

Coynes Caſe.

Coyne Vicar of *Aldbrooke* Plaintiffe. The queſtion being about a piece of d, parcell of the glebe, it was offered evidence, that indowment was of this urch in the time of *K. H.* 3. and in that no

no land was mentioned, but anſwer w
that ever in thoſe endowments liberty
reſerved to increaſe the maintenance of
Church, and alſo it was urged further t
no land was in the valuation of this Chu
in time of *H.* 8. when the Churches w
valued, but anſwer was made that la
were not in thoſe valuations, and omiſſi
alſo of many particulars were, and the
carage houſe in this caſe was omitted,
yet never queſtioned, but this did belo
to the Vicarage.

Sheffelds Caſe.

19 AN Action of falſe impriſonme
brought againſt a Conſtable, w
pleaded not guilty, the Defendant did ſh
in evidence, that he came to ſearch in ti
of the plague for lodgers in the town, a
he found a ſtranger and queſtioned hi
which way he came into the town; who a
ſwered, over the bridge, and the Judg
conceived this to be a ſcornfull anſwer
an Officer, and becauſe he had no Paſſe
but travelled without one, and gave ſuc
an anſwer, the Defendant did offer to ap
prehend him, and the Plaintiffe thereupo
being preſent ſaid to the Defendant he ſha
not go to priſon, but yet offered to paſ
hi

on

word for his forth coming, upon which Defendant did commit the Plaintiffe, it was ruled upon evidence, there was d cause to commit the Plaintiffe for opping the Constable though but verbally his Office, who is so ancient an Officer of commonwealth.

Bells Case.

Bell parson of *Thurnescoe* brought an Action of debt upon the Stat. of E.6. and *Nil debet* being pleaded, it did appear upon the evidence, that the Abbot who was owner of the land upon which e tithe grew was of the Cistertian order, fore the Councell of *Lateran*, which was of *K. John*, and that these lands were in e culture of the owner of the inheritance, e Counsell on the other side urged the anon Law, which saith that the prividge of holding discharged of tithes is not llowable to this Order, where the Abbot, c. holds a moytie or greater part of the own as owner and occupier, because if otherwise it would be a great destruction to he Church, *In magnam læsionem Ecclesiæ*, aith the Canon, and endevour was to prove the Abbot Lord & possessor of al the town of *Thurnescoe* abovesaid, and for that pur-

purpose the gift of *Vavesor* Lord of *Thurn-scoe*, was shewed which he made to the Abbot, and the gift was of *Thurnscoe*, which may be intended all the town, but the Judge was against that, unless apparent proof could be made it was so: & further our Law does not take notice of such Canons, &c. whether the Abbot &c. hath more or lesse, but of the order without regard to the quantity or prejudice thereupon, &c. One of counsell with the Plaintiffe made an objection that this priviledge ought to have been pleaded, and not put upon the evidence and said it was ruled so at the Assises then lately held at *Lincoln* in the case of one *Paul*, but that was not further insisted upon, and the matter went to the Jury, who found for a small quantity of tithes to the value of two shillings in a small quantity of Land for the Defendant, and for the rest for the Plaintiffe, because it did appear that was land taken of a Common of late time, and was no part of the possessions of the Abbot, &c.

Davenport.

21 D*Amport* cap. Baro. The Judge cited this Case of the Earl of Lincoln, issue was joyned that five shillings in mony had

been uſually paid yearly for the tithes
he place in queſtion, and it was found
ed for part of the tithes of thoſe lands:
though the iſſue is found for the De-
lant in the Prohibition, yet he ſhall not
judgement ſave for part, &c. And no
ultation ſhall go in ſuch caſe, *Quare.*

Fawcet againſt *Sutton.*

EJectment. *Banks* of counſell with
the Defendant challenged the array,
hat no hundredor was returned, and he
he challenge in writing in Latin thus:
intendit quod Iuſticiarii hic ad captio-
jurat' prædict' procedere debēt aut volunt
od Iuratores qui apparent modo nihil ha-
infra hundredum ubi &c. nec habuerunt
npanellationis jurat' prædict' then the
rs who did appear were examined up-
voyer dire by the poll, and confeſſe
have nothing within the hundred, by
h it ſhould ſeem that the Jurors ap-
ing ought to be hundredors, which ſee
wards here upon the Stat. 27 *Eliz.*
ther two hundredors appearing, or ſix
rned be ſufficient to take away this
lenge.

March

March ann. 1633. before *Vernon*
Judg *Aſſiſa.*

Bradfords Caſe.

23 UPon the evidence the Caſe was, t
a Feoffement was of eight acre
ſuch a cloſe which he bought of *I. S.*
it was holden upon the evidence t
though the eight acres were bought o
nother man then *I. S.* yet they paſſe we
nough by this Feoffement, for it was cer
enough before thoſe latter words added
if he had given a name certain to the acr
as white acre, &c. in which caſe the L
is though he adds which he bought of *I.*
this ſhall not make the grant the wo
though it be not true that he purchaſe
of *I. S.* Afterward the ſame Caſe wa
queſtion again before Juſtice *Crawley* J
of Aſſiſe there, and then another point
ſtirred, *Adwick* the Feoffer did grant
that his land containing eight acres
three roods in ſuch a cloſe, be it more
leſſe, which he did purchaſe of *I. S.*
the Feoffor had land there, which he
by deſcent from his mother in the ſa
cloſe, and beſides this he had not ſufficie
to make up the ſaid eight acres and th
roo

ls,& the Judg held that nothing of that ended from his mother ſhould paſſe, in this Caſe there being laid ſeverall a- alls of this land it was held all muſt be ed to put at liberty the land ſo im- nded by the abuttals: But note, I was o- led in the like Caſe by the Lord *Rolls* f Juſtice, *anno* 1649, at a triall in *d-Hall* in Caſe of one *Mrs Hadnet* for uſe in *Alderſgate-ſtreet*, where it was d becauſe the houſe had a name given he houſe called the Ship, it was denyed hough inſiſted upon that the abuttals h were divers ſhould be proved.

T was holden for Law by the Judge, that where the Defendant himſelf the deed which concerns land in que- and will not produce it, in ſuch caſe Copy thereof ſhall be permitted to be n in evidence, and ſo it was, and the eſſe ſwore it once in his hand, and this a true copie of the deed and himſelf examine it.

T was likewiſe holden by the ſame Judg upon an evidence that if a porti- of tithes hath for a long time been uſed h a Chappell, it ſhall paſſe now by grant of

of the Chappell, and all tithes there
belonging, though otherwiſe the name
tion of tithes is neceſſary in grants.

Godfrey Horns Caſe in prohibition.

26 IT was holden that thoſe lands wh
the priors of the Hoſpitall of St. *I*
of *Ieruſalem* held in their hands in fe
the councell of *Lateran* are onely cap
of diſcharge of tithes, and not thoſe t
purchaſed after, and where it was in a
mers hands, albeit he purchaſed the fee
terwards he ſhould not hold it diſcharg
as a Lord Abbot, the town of *Comberwo*
where the lands ſuppoſed to be privileg
lay was parcell of the preceptory of *Ne*
land, who granted it to the prior of
Iohns, and was five miles from *Newl*
which was parcell of the ſaid priory of
Iohns, and not probable to be manured
the Governour of that preceptory, as
Canon requires, becauſe ſo far diſtant,
it was found for the diſcharge *Prout*, &
for land may be ſaid, manured with prop
hands by ſervants, if ſo be it was in poſſe
on and uſed as a Farm by the preceptory
Newland as the Judge held.

Augu

guſt 1633. coram *Davenport* *Dampart* Chief Baron, Judge *Aſsiſa.*

Swallow againſt *Stephens.*

IT was holden in this Caſe, that where an Action is brought by the Maſter for beating his ſervant by which he loſt his ſervice, that this is Treſpaſſe *Vi & armis*, not upon the Caſe, but in this Caſe the Maſter ſhall not have dammages for the beating, but for the loſſe of ſervice onely: *Fitz. N. B.* 91. *G.*

Booths Caſe.

DEbt upon a penall Bill, it was ruled that payment pleaded, &c. was good Plea, as it was in Caſe of a Bond with a Condition.

Lawſons Caſe.

IN Debt upon Arbitrement the ſubmiſſion was, that *A*, *B* and *C* ſhall make Arbitrement in writing, or by word, the Evidence was, that the three Arbitrors were agreed of their award, and pronounced it, and declared the ſubſtance, and the others did agree to it: and holden by the Judge, this was no good Ar-

bitrement in this manner made and ag
to: And he further held, that it wa
possible for three men to make an Arb
ment by word of mouth, because it ca
be joyntly pronounced, but it ough
in writing in such case, and the Ca
Spink and *Stubs* was cited, where a by
was said to have been made by three or
persons, and part of them made it, an
rest did consent, and holden not goo
such case.

Dobsons Case.

30 THe Defendant in Trespas had p
ded a Recovery in Court Baron
the Plaintiffe did reply, *De injuria sua*
pria absque tali causa, and ruled it w
good replication, and holden at the
time that sale of goods taken in execu
upon a Judgement in such a Court wa
good without speciall custom to warra

Lees Case.

31 A Letter of Attorney was given
vidence, which was to enter int
the land contained in the Lees, &c. and
Livery, or deliver the Lees, and the wit
proved that the Attorney did enter into
middle of the land, and delivered the

ruled a good execution of the Autho-
, and it shall be intended he did enter
o all though he did not expresse so much
this though the land lie in severall Sel-
ons, see by me if in severall towns.

Conyers against *Jackson.*

30. A Man hath an Acre of freehold in a great Field, to which Common doth belong, now he cannot in his Prescription lay it, that he hath Common in the whole Field, but in such a part of the Field, as in that toward the East part or West part of the Field, because if otherwise, he should then extend his Prescription to his own land, which would not be good, & because he had here layed his Prescription to the whole Field; he was nonsuted, &c.

Fawcet against *Anderson.*

33. UPon the Evidence this was holden, a man hath lands in fee in the town of D. and also other lands in Lees there, the first was parcell of the manor, the Lees lands parcell of the Rectorie, & he bargains and sells his manor, and all his lands; and names in particular the Lees land, and after he did acknowledge a Fine, and the Judge ruled it that this Fine shall not operate up-

on the leaſed lands as Livery would if it had been made of all the land contained in the deed, though it be not actually made upon the leaſed land but the other, and in ſuch caſe alſo, if a fine follow ſuch livery, it will have its operation to bind the Reverſioner, but otherwiſe it is where no livery is made, but in the Caſe at the Bar, the Conuſor, who was the Leſſee had made an under lees before this bargain to another, in which caſe it was alſo agreed that livery upon the fee ſimple land in name of all ſhould have no operation upon this leaſed land, of which the ſubleſſee was in poſſeſſion.

Anderſons Caſe.

34 IN Debt upon Stat. 1 *E.* 6. for not ſetting forth of tithes, and it was proved in evidence tithe was ſet out, but afterward taken away again by him ſets them out, and it was holden to be no ſetting forth of tithes within the meaning of the Statute: and the Judge ſaid ſo it hath been reſolved. See by me if the time they ſtand ſo ſet out, be not materiall, and it ſeems it is, and ſeems difference where they have been ſo ſet out two or three daies only, and where by ſpace of a week, and then fetched away by the owner of the land, &c.

Birkes

Birks Caſe.

35 IN Avowry 1 Preſcription was that he and all his Anceſtors had Common, &c. and did not ſay further whoſe heir he was, &c. And for that cauſe it was ruled no good avowry, becauſe it extends to all Anceſtors of part of the mother, father, Grandfather, be he heir to them or not, & thereſore abſurd and impoſſible, and the Iury was directed to find for the Plaintiffe in the Replevin: See by me 39 *H.* 6. 41. *Dyer* 117. and old Entries 139. where the Preſcription is as here, that he and his anceſtors, &c. but then it goes further, and all thoſe whoſe eſtate he hath, &c in ſuch land, &c. have had Common, &c. qd. note the differences.

Hollſworths Caſe.

36 A Copyholder had made a Surrender in fee of his copihold in poſſeſſion after his death, and it was holden good by cuſtom of the manor, which was *Wakefield* here, otherwiſe it is by the Common Law. 2 It was ruled that a Copyholder in tail cannot bar the iſſue in tail by a bare ſurrender without Seiſer or Recovery, as the cuſtom is, unleſs by uſage it can be ſhewed

that ſuch Surrenderees have injoyed ſuch lands againſt iſſues in tail or Remainder men who have ſued for them, but ſee by me if rather the uſage ſhall not be ſhewed and proved on the otherſide by the iſſue in tail, and remainder-men, that they have recovered againſt ſuch Surrenderees by vertue of ſuch Intailes, for otherwiſe ſuch tails cannot be ſaid tails, for they are not within the Statute of *W.* 2.

Sir *Thomas Gowers Caſe.*

37 IN Action for words, that he was an unjuſt Juſtice of the Peace, and the evidence was, that the Defendant ſaid he was no juſt Juſtice of the Peace, and a ſpeciall Verdict directed, whether the words in the Declaration are proved or not.

38 K*Erifford* an Attorny was Plaintiffe in Battery, and the Caſe was thus; He was walking in the market (as Attornies do too much) and the Defendant and he had ſome angry words there, upon which the Defendant did preſſe to go by him, and in going, by reaſon of the throng of people there, he juſtled the Plaintiffe, and for this he brought this Action, in which if an aſſault onely be proved, it is ſuf-

fficient, and holden it was no aſſault, for e touching him, or juſtle was to another nd, namely, to get by him in the throng, nd not to beat him, &c.

39 THe Executors of *Harſnet* Archbiſhop did bring Detinue for ſo many ggs, ſo much corn, ſo much poultry, &c. eſerved by a Lees, &c. by which Lees it as agreed that a veſſell ſhall be ready at uch a Port, &c. to take them, &c. and the xecutors did prove the veſſell was there eady &c. accordingly, which was ſaid ought to be done as the firſt act, and the tenant is not bound to tender at the waterſide firſt, till the veſſell be there, &c. *Quod vota.* In this Caſe *Non detinet* was pleaded. And note it was directed to the Jurors to put a groſſe ſumme upon all the things demanded, and not a value ſeverally, which I doubt on, becauſe part may be had in *ſpecie*, and part not perhaps. *ergo.* Alſo ſee by me of this detinue for things due by reſervation, and it ſeems that debt ſhould rather lie in this Caſe.

Vepont againſt *Hall.*

40 ANd upon the evidence the Caſe was thus, *A* ſurrenders a Copyhold to

B in fee, after the death of *A*, *B* dies b
fore admittance, and *A* in the interim h
made a ſurrender to *C* in fee, and wheth
C or the right heir of *B* ſhall have this w
the queſtion, and a ſpeciall verdict was d
rected. *Banks* of Counſell thought *B* h
the right and admittance could not be
him ſo long as *A* did live in this Caſe, b
after this doubt was laid aſide for ſo muc
as the admittance of *B* was proved, and
the ſurrender to *C* was void clearly, &c.

Auguſt 10. *Caroli Crawley* Judg.

Riggs Caſe.

41 *Rigg* brought an Action of Battery
and the Caſe was, the Plaintiffe w
a Boy and did preſſe to come into a Cock
pit, to ſee the game, and the Maſter of th
pit, indevouring to put him forth, he re
ſted him, the Maſter thereupon pulled hi
by the ear ſo that it bled, and the boy b
his guardian ſues this Action, and the Ma
ſter pleaded not guilty, for this it was a
gainſt him, but by *Dampart* the Judge, ſome o
pinion was that by good pleading in this
Caſe the Maſter of the Pit might have ju
ſtified the act well enough, but could no
plead, not guilty.

Iohnſon

Johnſon againſt *Marſhall.*

2 IN Debt upon an Arbitrement and it was pleaded that no ſuch Arbitrement was, It was holden ſufficient to prove this iſſue, that an Arbitrement *De facto* was made, though inſufficient in point of Law, and if the Arbitrement be ſet forth *in hæc verba* by the Plaintiffe, the Defendaut may move in ſuch caſe in arreſt of judgement, if aught in point of Law.

43 IN *aſſumpſit* to pay ten pounds if ſuch a thing is done, as if the Defendant go to London for him, &c. It was holden here though the ſumme is certain in this Caſe, yet becauſe all muſt be in dammages the Jurors may find leſſe dammages then ten pounds.

Harlings Caſe.

44 H*Arling* Adminiſtrator, after much goods adminiſtred had his adminiſtration revoked . . and the adminiſtration was committed to *B*, and *B* ſued the firſt man for goods unduly adminiſtred and holden no remedy but in Chancery in ſuch caſe, and by the Judge lately in Chancery ſuch a decree was made by himſelf then ſitting

ting there, but his brother *Crew* at the B was not ſatisfied with the decree, or that could be.

Wadſworths Caſe.

45 IT was upon an Intail of a Copyhol within the manor of *Wakefield*, and ſe verall ancient Intails ſhewed in evidence i *E.*3: time, and remainders limited over up on ſuch Intailes, and plaints in nature o Formedons brought there for ſuch Remain ders and Recoveries thereupon, and alſ ſeverall ſeiſures and one Recovery wer ſhewed to cut off ſuch Intails in that Court this was a dormant in tail made in Kin *E.* 4. his Reign and ſeverall iſſues after ha taken their admittances as of fee ſimpl land, as heirs in fee, and for this cauſe, and for that purchaſors look at the Copies; and ſeeing fee ſimple in admittances are ſecure, the eſtate is ſo, and apply their aſſurances accordingly, the Jury found for the Plaintiffe againſt this Intail, and it would be perillous if it ſhould be otherwiſe, and it ſhall be preſumed the tail hath been ſome way cut off, when many admittances have been in fee ſimple &c. ſo that Stewards ought to be cautelous how they admit heirs and ſee what remedy, ſhal be againſt the Stewards if they

y admit an heir as tenant infee ſimple, en his Anceſtor was onely tenant in tail.

Wivels Caſe.

HE had two Farmors, *A* and *B*, *A* had the ſoil of one parcell, and *B* d the wood which grew upon that par- l granted to him, and afterward *Wivel* e Leſſor ſold the Farm of *A* and all that had in his tenure and occupation, and vied a Fine accordingly, and the queſtion as whether the ſoil of that parcell *B* had e grant of the wood in ſhould paſſe or o, and the Judg doubted. See by me Commentary upon *Litt. fo.* 4. *Dockwrays* aſe, and what paſſeth by the grant of *oſcum*, &c.

Metcalfe againſt *Staveley.*

47 EJectment. Lees in writing is delive- red upon the Land, and it was *Ha- bendum à die datus*, now when the Leſſee is upon the land after the ſame day it is a diſ- ſeiſin, but his continuance there the next day by virtue of that Lees purges the diſ- ſeiſin, & now he is rightfully in of the lees onely, and ſo may maintain an Action of *Ejectione firme* as it was holden by the Judg.

Aſsiſa

Aſsiſa March 10. *Caroli*, *Vernon* Judge.

Greenwoods Caſe.

48 IN Debt upon the Stat. of 2 *E.* 6. C Caſe was, three Joyntenants of tithe and two of them grant their parts for th years to two grantees, and theſe two bring the Action of debt alone, and rul not good, and that all three, though nants in common, ought to have joyned this Action, for its a perſonall Action Treſpaſſe is, and upon this the Plainti were nonſuit. Another point was ſtirr to uphold this Action that the third m omitted had diſclaimed in Chancery by h anſwer, but holden that alters nothing, be ing in an Engliſh Court, &c. then a relea made to the other, by the third Jointena was ſhewed in evidence, and this was inrol led in Chancery, and this was admitted fo good evidence, though no proof was of th ſealer and delivery of it, for it ſhall be pre ſumed if the contrary is not proved, ſee afterward 11 *Caroli* it was made a great doubt, whether tenants in common of tithes ſhall or may joyn in an Action of Debt upon this Statute, and a ſpeciall verdict found,

Cockin

Cockin againſt *Boſwell.*

THe Caſe was, that he in the Reverſion who had a Rent payable at nitſunday and Martlames ſels this the t of May, but the deed was not inrol- nor attornment, &c. till Mid-ſummer lowing, and it was held the Bargainee ll have the Rent, but becauſe the Coun- l of the other part were not ſatisfied a ciall verdict was found.

Rawclif againſt *Booth.*

HOlden upon an evidence where a Leaſe is to trie a title, if my cattle me upon the ground, and are permitted me to reſt there a long time, I ſhall be an ector, otherwiſe if a ſmall time. See what ne will make this, &c. It was further held, the Maſter and owner of the cattle ap- int his ſervant to look to the cattle being ere, the Maſter & not the ſervant ſhall be e Ejector in ſuch caſe, but where no ſer- nt is ſo appointed, if a ſtranger come o- r the ground while my cattle are there, ſhall be the Ejector.

Bull againſt *Keighly.*

1 DEfendant promiſe if the Plaintiffe will marry his neece he will give her

her two hundred pounds, who ſhew
did marry her, &c. but upon the evid
it appeared this marriage was four yea
ter ſuch promiſe made, &c. and in this
many diſcharges were proved to have
made by the Defendant to his ſaid
that ſhe ſhould not marry the Plaint
and if ſhe did he would give her nothi
and other diſlikes, yet direction was
the Plaintiffe, becauſe it might be upon
firſt promiſe, their affections were ſet,
and no juſt exceptions were taken after
promiſe made to revoke it, &c. See by
it ſeems much inconvenience may be
this, for if after four years, why not a
ten or twenty years, may ſuch promiſe
made uſe of on, which would be hard,
And note, the Iſſue was *Non aſſump*
and this admitted in evidence, alſo ſee
me the book of 10 *E.* 4. 6. where 'tis h
den that a Contract ſhall be taken ou
hand, or elſe it vaniſheth into nothing.

Sir *William Savile* againſt *Grinſditch.*

52 IN Treſpaſſe, Preſcription was in t
Caſe made to 60 acres *Omni temp*
anni, to him and all thoſe whoſe eſtate
had, and iſſue taken upon the Preſcripti
and becauſe the eſtate in one *Vaveſor*
claim

laimed from the Crown, under whom the Defendant did claim, was an eſtate tail, the preſcription was held not good, which ounded in fee ſimple, and in that Caſe he ught to have layed the Preſcription in the rown, and it was further held that a *ue eſtate* cannot be of tail. 2 Ppoint as, that where the Preſcription was to 60 res, and upon the evidence it did appear hat onely 20 acres of the 60 were fallow y turn every year, the reſt ſown, it was eld not good, a 3d point was, that if any ent, &c. hath been payed for this Com- non, that ought to be mentioned in the reſcription, but proof was, no ſuch thing ad been payed, and therefore holden good s it was layed.

53 ANonymus. It was held if *A* do deliver a deed made to *IS*, to *ID*, hough he do not ſay to the uſe of *IS*, yet his is a good delivery of the deed to *IS*, f he accept of it.

Aſſiſa Auguſt 11. *Car. Barkley* Judg.

Lee againſt *Savile.*

54 THe Judg did put back the Jury twice, becauſe they offered their verdict contrary to their evidence, as he held and ſet

a hundred pound Fine upon one of the I
ry who had departed from his companio
but after upon examination it was taken
again, for that it did appear, it was onely
reason of the crowd, and some of his fe
lows were alwaies with him.

Ballerd against *Sitwell.*

55 FEoffement by deed and no Liver
was, yet this may in evidence be use
as a Relees. 2° It was held if one make
Lees of land in which he hath nothing, an
afterwards purchase this land, this
good against him, and all that do claim un
der him, and the Jury is bound to give faith
to this accordingly to that the Law saith in
such case of Estoppell. 3° It was held if co
lorable payment of money by a purcha
sor is recited when none was payed *revera*,
this estate is invalid against him comes in
bona fide for valuable consideration, and
this may be given in evidence well enough,
without pleading it.

Dawtry against *Huggins.*

56 IT was ruled upon an evidence, if *A*
hath the custody of the goods of *B*,
as here it was, hoggs put into the Defen
dants yard, if these do a trespasse to the
land

nd of *C* adjoyning, *A* ſhall be puniſhed Treſpaſſe, and this though the owners rvant did wait upon them, and here it was roved the ſervant of *A* did alſo wait on hem, and did ſerve them, therefore they ere in his ſpeciall poſſeſſion; and the like atter was ruled in the Caſe of *Stephen ateman* of *Wakefield* for agiſt cattle, if ey doe commit a Treſpaſſe, the owner of e ſoil, where, &c. ſhall anſwer for that reſpaſſe, *Quod nota.* See by me if they reak out by unrulineſſe, and are ta-en dammage feſant if the owner ſhall not e put to a Replevin, or how far he who kes them to agiſt ſhall anſwer the ow-er, &c.

Evans againſt *Yeoman.*

7. A *Aſſumpſit*, the Caſe upon the evidence was, that whereas the Plainſſe did deliver a book or Charter to the Defendant, it was holden that unleſſe there ad been an expreſs promiſe to redeliver this ack again, this Action will not lie. 2 It was eld that if a promiſe be to re-deliver he book, &c. within tenne daies, his ought to be proved, and it is not ſuffi-ient to prove the promiſe to deliver with-ut more. See by me if it be law, for n *Michael.* term, 1650. in the upper

Bench, in a Case between *Child* and *Gar-der*, the better opinion of the Court was that the speciall time agreed upon by the parties as there it was, Midsummer following, it is not materiall when the Action brought after the day, and he may lay at Michaelmas to be payed, or any day following that, or may lay it to be payed upon request upon the promise in Law. *Quære nota bene.*

Harrisons Case.

58 HE had made a Lees of a house reserving rent, and after commanded the breaking of a Partition wall in the said house, and it was holden this was no such Reentrie into the house as will make an extinguishment of the Rent, for that must be a continuance of the possession, and putting out the lessee.

Tempest against *Linley.*

59 AN Action upon the Case against a Sheriffe upon an escape suffered by his Baily upon a mean proces, and it was proved in evidence, as necessary to make this Case, that there was such a debt, that such a proces, and warrant was and a due debt. And lastly, that the party arrested was

s become insolvent, otherwise he should ot have recovered dammages to the value his debt, as here he did, upon all this pro- d in evidence as aforesaid.

Northend against *Lister.*

DEbt against an heir, and Defendant pleaded that he had nothing in fee mple by descent at the time of this writ urchased, and the evidence was, that he ad made a Feoffement before, but no roof was of any consideration payed for he land, and no resolution was in it, see; or it seems he is in of the old estate, *ergo.*

Gledels Case.

IT was holden that where a man would recover the mean profits in an Action f Trespasse, he must prove entry into eve- y parcell, and not into one part in name f all.

Wincopes Case.

UPon the Statutes for robbery a- gainst the hundreth of *Osgodcros* t was holden that the Master may well ring this Action where his servant was obbed, now to prove what mony the ser- ant had, which was two hundred pounds;

he was cauſed to prove he had ſo much
ny delivered him, and that he had
formerly truſted by his Maſter, and
well diſcharged that truſt; then he pro
the robbery by his outcries, and that
was wounded in the aſſault, and ot
badges of ſuch a fact done, then it was
that his own oath before a Juſtice of Pe
is ſufficient within the Stat. of 27 *Eliz.*
no contradictory proof ſhall be received
gainſt that oath that he knew any of
Robbers, for when he hath once denye
upon oath this is all required by the Law
inable to bring this Action as to that poi
Quod nota.

Hills Caſe.

63 IN an Action upon the Caſe for wo
ſpoken of the Plaintifs wife, the D
fendant ſaid ſhe was a theef, and the Defe
dant did juſtifie, becauſe ſhe had broken
hedge and taken away the wood, and
prove it, but it was ruled by the Jud
to be no proof of any felony, becauſe
hedge was fixed by ſtakes to the freeho
but becauſe of this matter the Jury g
but eight pence dammages to the Plaint
and ſo he could have no more coſts, wh
is the very intent of the Law of 21 *Ja.*

ter men from ſuch triviall Actions, and this Caſe the Judge would not permit y other defamatory matter to be given in idence to prove the woman a Felon, &c. ſides this pleaded. And ſee by me though e ſticks are looſe and ſeparate from the dge, it ſeems to be no felony, becauſe ttle value, and may yet be ſaid part of e hedge, as a milſtone is part of the Mill, ough laid by, and ſeparated from it, and is a Gavelock.

Creſwicks Caſe.

4 IN an Action of Battery, declares that the Defendant *ſimul cum A* and *B*, d beat him, it was ruled that thoſe in the *nul cum* may be charged with the damma-es, which now are given againſt the Chief efendant, but here, becauſe no proof was gainſt thoſe two in the *ſimul cum*, they ere admitted to be witneſſes for the De-ndant.

Hamerton againſt *Eaſtoff.*

5 ASſiſe of Common, and the writ was *pertinens* belonging to ſuch a Farm, c, and it was holden that the plaint nd ſo evidence may well be of Common ppurtenant, and warrantable enough by

that word *pertinens*, yet in ſtrictneſs
Law they differ. 2 Point, the Preſcripti
was to have Common for beaſts, Lev
and Couchant, and the evidence was
all beaſts commonable, and held that
did not purſue the Preſcription, but is l
ger, the iſſue in this Caſe was *Nul tort*
diſſeiſin, and the evidence proved that
tenant in the aſſiſe had improved part
the ſoil of the Common, in which the Pl
tiffe did claim this Common, and the J
doubted at the firſt whether this was go
in evidence or he ought to have pleaded
but upon view of the Statute of *Merto*
held it was good this way, and in this C
it was alſo held by the Judg that a Lord
by wrong may improve by vertue of t
Statute againſt the Tenants and Comm
ners, *Quod nota.*

Legerd againſt *Linley.*

66 IN Debt upon a Bond as Executor
his own wrong, and fully adminiſt
was pleaded, and the Caſe upon the e
dence was, the Defendant had been bou
with the Inteſtate as his ſurety for a gre
ſum & the Inteſtate had a deſire to ſave h
harmleſſe, and to that end did upon
death-bed make the Defendant a deed

ſt of all his goods, but they were not re-
oved, but did remain in the Inteſtates
oſſeſſion, for the little time he lived, and
ough it was good conſcience to free his
rety, and the continuance of poſſeſſion
ter the deed made but a little time, yet it
as ruled a fraudulent deed and gift, for
ebts upon ſpeciall tie ought to be prefer-
d before this equity, and it was his folly
e took not counter ſecurity. Another
oint in the evidence was, the Defendant
wed the Inteſtate ſeverall Rents, and he
ad acknowledged himſelf ſatisfied for all
Rents due by the Defendant, and it was
olden a good diſcharge being in his life
ime, and ſo not to be charged with it at a-
y aſſets upon this plea, but where he had
ayed mony for ſo many blacks which the
nteſtate had appointed him to be uſed at
is funerall, it was diſallowed and held no
good adminiſtration.

Aſſiſa 11. *Caroli coram* Vernon *tempore Quadrag.*

67 A Man made his wife a Jointure du-
ring marriage & then ſels the land,
it was held the purchaſor ſhall not avoid

this estate in Jointure as fraudulent with any the Statutes of fraud, &c.

68 A *Assumpsit* for ten pounds lent mon & *Non assumpsit* pleaded, It was no ruled that payment before this Acti brought is no good evidence, but see by because there is no continuing consider on at the time of the Action brought, a in the Case of one *Blesbie* Summer Assise 1639 it was holden good plea & evidenc See Case *Banes 9 rep.* It is holden whe there is no debt, the Defendant may plea as aboveſaid, and it seems all one when it payed as if no such debt had been, a 9 *E.* 4. 3. *b.* It is holden that if the debt b payed, the Defendant may plead the gen rall Issue, *Nil debet.*

Assisa August 1636. *coram Barkley* Judge.

69 IT was now over-ruled, that if a Te nant who hath bootes to his house i another mans land, do cut wood for tha intent to take his boote wood, and the ow ner of the land take it away, an Action o Trover and Conversion lies against him by the Tenant of the land who hath such bootes.

N an Action upon the Stat. of 2 *E.*6. it was over-ruled by the ſame Judge t thoſe Abbies which came to the Crown 27 *H.*8. ought to pay tithes, and though payment hath been at any time ſince the ſolution for the lands of ſuch Abbies t ſhall not free them when it comes in eſtion, for they were ſpared in former es, becauſe the reaſon of the Law was t then known, and in this Caſe he ſent k the Jurors three times, becauſe they uld not find as he directed, being matter Law, in which Caſe the Jury ought to edit the Judge, and he was diſpleaſed and d them another Judg would have bound em by Recogniſance to appear in the Star amber, and note, it was but ſome Jurors re that oppoſed the reſt.

Reresbies Caſe.

ONe *Roliſtone* who was to marry the daughter of *Boſwell*, and have nd with her in marriage, before any ſet-ement made a Leaſe of the land by Inden-re, and then the land was ſetled upon m and his wife, and after his wife and he d joyn in a Leaſe to a third perſon reſer-ng rent and other valuable conſideration, nd the firſt Leaſe was proved alſo to be up-

on

on good conſideration, the Iury in this
gave a verdict for the ſecond leſſee, a
was holden by the Iudge, that the ſec
Leſſee who claimeth under the title of
ſtone that was eſtopped, ſhall be concl
alſo as he was, and in his opinion the
leſſee had the beſt title which was aga
the verdict: yet ſee by me, becauſe the
who had a joint intereſt with her husb
joyned in this leaſe, and her mind was
ing now preſent that the ſecond L
ſhould have it, becauſe ſhe had Rent
that and none by the other.

Honors Caſe.

72 IT was doubted if cheating Rogue
bear Action, and upon that the p
ties did refer themſelves to an agreeme
&c.

Barton againſt *Colthirſt.*

73 *A* By Indenture of uſes raiſeth an eſt
in fee to *B*, who regrants turbary
A by another deed, and after *A* doth le
a Fine to confirm the eſtate, and uſes abo
ſaid declared, and it was ruled that t
Fine toucheth nothing upon the grant
A of the turbarie to extinguiſh it or oth
wiſe hurt it, *Quod nota.*

Ma

Merriwethers Caſe.

A Promiſe to *I. S.* in conſideration, that he hath marryed his ſiſter he will y him a hundred pounds, when he is able, that he himſelf get a wife with two hun-ed pounds, and *non Aſſumpſit* pleaded, and ft it was ruled to be a good promiſe, ough made after marriage, and though t a brother who made it, and not a fa-er, and ſecondly, it ſhall be taken as ac-owledged, that the Defendant is of abili-, *prout*, when he hath pleaded *Non aſ-mpſit*, and the Plaintiffe hath a verdict.

Sir *Richard Hawkeſworths Caſe.*

5 COmmon was claimed in *Cockly* hils in the pleadings, and the evidence rove that the bounder was for this Com-non now claimed, *ad Cockly* hills to *Cock-y* hills, and by the opinion of the Court t firſt, it was held to be againſt him did laim this Common, becauſe *ad* or to ſuch place is *excluſive*, and the Preſcription is n it, yet becauſe the continuall uſage was proved to be in this place, the Judge did think it might be well enough for the Pre-ſcribor to have this Common, but at preſent it was put to a view, and the Judge heard,

and

and admitted proof of the usage of
Common, whether in this place or
which shewed the bounder to that pla
was not exclusive peremptorily by his
mon.

Wards Case.

76 ACtion of Battery against a Con
ble who had made a search in
Plaintiffs house for stollen goods by ver
of a Justices of Peace his warrant to sea
in all suspicious places, and upon the e
dence it appeared the Defendant in th
search did pull the clothes from off a w
mans bed then in her bed, to search und
her Smock, and this was holden to be
misdemeanor in the Constable, and all wi
him & did make al their proceedings in th
place illegall from the beginning. 2. I
this misdemeanor had not been, it was ho
den the arrest of the Plaintiffe in this Ca
upon the request of the party alone whos
goods were stollen, was good though non
of the goods were found in the hous, becau
the party whose goods were gone, did char
the Plaintiffe to have taken them, & to hav
them, howbeit the Constable in discretion
might have refused to arrest him upon such
request for that he himself found no caus
of suspicion upon his search. *Not a.*

Anc-

ANonymus. The Father of his own free will doth promise a creditor of Sons to pay such a debt for him, and the dg held the promise binding. See Case ſpeth and *Cogill*, *trin.* 4. *Car.* It was ubted whether the Father should be und by his promise afterward to pay this bt and better opinion was not, and that arity past was no good consideration. See *Eliz. Dyer* the Case of a Master upon il with his servant.

Cusworths Case.

A Tenant for life remainder to *Thomas* his brother in tail untill he ali-, remainder in tail to *C*, another brother, he tenant for life makes a Feoffment with arrantie, and this Feoffor doth infeoffe *homas*, who infeoffes an estranger, & then ies having issue, and *C* the last in remainer enters, and makes a Lees to the Plainffe in the Ejectment, and it was holden hat the entry of the Remainder man here vas not lawfull, in which the limitation pon the estate of *Thomas* (untill he alien) vas not regarded, and in this Case the warranty did work nothing, because *Thomas* dyed before the tenant for life, who made the war-

warrantie, ſo the right did deſcend to
iſſue in tail of *Thomas* and he remitted
Caſe *Mary Portington* 10 *Rep.* that the
offement of Tenant in tail may be purv
ed againſt by a Condition, but this i
good to make good a limitation upon
alienation, for this was to raiſe one eſt
out of another, put into a ſtranger befo
which cannot be, as where a Leaſe for ye
is, and a Condition is, that if he grant t
over, the Leſſee ſhall have fee, and he gra
by Fine, It is impoſſible when the Fine h
ſetled it in one man, that it ſhall imme
ately be transferred to another ; ſee wh
by way of uſe it may be as Feoffem
A, the eſtate is immediately raiſed bac
gain to the Feoffor by the uſe executed u
on the Statute of 27 *H.* 8.

Ruſhworths Caſe.

79 *A* Having three acres in a place, call
Broad Ings, hath another piece
land ſeparate by a hedge from it, but adjo
ning to the ſaid three acres, and this h
been ſeparated in this manner by the ſpa
of forty years, but anciently it had be
part of *Broad Inggs*, and of late the hed
was taken down, and it was laid to the thr
acres, then *A* makes a Feoffement of th
thre

ee acres in *Broad Inggs*, and adds these
rds (be it more or lesse) and it was held
t the parcell once separate, though it
h been annexed now tenne or twenty
rs shall not passe by this conveyance,
ause this may have gained another name
ring the separation.

Ket against *Ash.*

THe Case was thus, a man buies a hundred sheep for twenty shillings a
ep, and after contracts with the same
n to have a hundred more at the same
ce, and these hundred sheep were deli-
red at severall times, yet holden one in-
e Contract for the whole last hundred
ep, and he shall have an Action for the
hole mony presently though the sheep
e delivered at forty severall times.

Earl of *Pembrokes Case.*

A Hath common of Estovers in the
wood of *B*, *f.* for houseboot, and he
ts down four trees for that purpose to
epare this boots, and in the working,
ey prove unfit for that use, as for posts of
house, &c. In this Case it was holden by
e Judge upon the evidence that this te-
nt cannot now convert this timber to any
other

other use, &c. as to Cooper-ware, or
like, neither can he sell them and buy o
fit wood with the mony, but note his
tent to make provision to build or r
the house for which the bootes were,
was not proved, as it seems he ought,
in this Case it was further held, that
cannot inlarge the house with this timb
nor board the sides of a Barn there, wh
had mudde walls, or the like before.

82 A Case in the Exchequer was c
by the Judge to be resolved tha
Cottage cannot by the Law claim to h
Common.

83 IN the Case of tithes upon the Statu
of 2 *E.* 6. the Rector Plaintiffe w
pressed by the Defendants Councell
prove his admission, and Institution, a
the reading of the Articles of the Church
&c. but it was now ruled by the Judg th
he should not now be put to it, for tho
things shall be presumed, and if otherwi
let the Defendant prove it. *Quod nota*
put to prove a Negative.

Aſsiſe Auguſt 13. *Car. coram Barkley Judge.*

ANonymus. In debt againſt an heir he pleads he hath nothing in fee by ſcent, &c. and in evidence it appeared he d fee, but depending upon an eſtate tail, d upon this a ſpeciall verdict, ſee by the s iſſue is againſt the Defendant, for he ght to have pleaded this ſpecially, and ſo was done in Caſe *Traford Hil.* 31 *Eliz.* d concluded, *unde debitum prædictum ſolre non potuit*, and ſee of the rent or ſervice pending upon this Reverſion, and of hat value they ſhall be, &c.

Grice againſt *Norton:*

I Challenged the Jury, becauſe the Plaintiffs Attorny was under-Sheriffe, d did return the pannell, and the Judge this Caſe took the Attornies oath, that did make the pannell, who ſwore he did ot, and thereupon the Jury was ſworn, hich ſee if this courſe was not *minus juſte*, r that its a principall challenge, and ſo it ay be done where the Sheriffe is Coſen one party, he may ſwear he returned ot the pannell, but this was never admitd, and ſee 7 *H.* 7. the challenge in this

Caſe ruled a principall challenge, & not
the Caſe the Judge directed the form
this challenge to be thus; May it pleaſe
Mr Juſtice *Barkley, ceſt enqueſt ne deves*
der, &c. and then ſhew the matter of
challenge. *Quod nota*, the modeſty of
Judg at this time, not to direct to ſay,
it pleaſe your Lop, which title ſeems of
teſie, not right.

Torſies Caſe.

86 IT was holden cleare, that if a cuſto
hath been for Copiholders within
manor that the forfeitures, &c. have be
preſented at the Leet, there held, which
an improper Court for that purpoſe, yet
ſhall be good in Law, and mens eſtat
ſhall not be overthrown for ſuch ignora
proceeding of a Steward.

Michael Dents Caſe.

87 IT was holden clear upon the eviden
that if two men buy corn joyntly,
barly or the like; the one ſhall not have a
compt againſt his fellow for the diſpoſal o
this.

Vſleys Caſe.

88 TReſpaſſe. Plaintiffe declare that th
Defendant did break his cloſe and
eat

t his grasse, &c. *Cum averiis suis, s.* oxen, eep, hoggs, *avibus, anglice* turkies, and e Judge in this Case did hold that turkies e not comprised within the generall word *veria*, which is an old Law word, and ese fowls came but lately into England, d upon this it was directed to sever the mmages, for otherwise if the dammages all be joyntly given, and it be ill for this the turkies, for the reason abovesaid, it ill overthrow all the verdict.

Allens Case.

THere were two deeds for leading the uses of a Fine subsequent. It was olden that the latter deed shall stand for e direction thereof, and it was in this ase further holden, that where a Fine and ve years past are urged to bar a right, &c. y non-claim within the Statutes, in this ase he ought to shew the proclamations nder seal, and the Cirographers mention-g that it is a Fine with proclamations, as usuall, will not serve, and so it was ruled pon the evidence.

Thursbies Case.

SUit for tithes of corn growing in a Parke, which is now disparked, and

the Defendant did plead a Custome to
Venison and a Horse grasse time out
mind of man, &c. in satisfaction of all tit
&c. and evidence was given that corn
been shown there and reaped, but no ti
payed but onely this rate for tithes, but
witnesse proved a Buck payed yearly,
could not tell whether it was taken out
this Park or not, and the Jury was charg
to enquire specially of this, and they fou
that if it was payed out of any Park it h
been accepted, and allowed, and this w
holden better to perform the custome th
if particularly tyed by the custome to
the Deer out of this Park, for now thou
the Park be destroyed, yet this payment
a Deer may be performed, otherwise it
if the Custom had been to pay a De
which had his going in this Parke onely,
then by destroying of that the custome
gone also. It was also holden though t
Deer had been often and most what pay
out of this Parke in question, yet this do
not alter the custome, but it may be pa
out of any Park, and if the custome was
pay a shoulder of Venison generally, it ma
come out of any Park, as was now held
but the Judg directed the Jury that if th
found the Deer was onely to come out
this

is Park, which is now diſparked, then to
d a ſpeciall verdict, it was alſo held that
t might well be in the Eccleſiaſticall
ourt for this *modus*.

Jackſon againſt *Cook*.

THe queſtion was, Leaſe or no Leaſe,
and the words of a perfect Leaſe by
e Defendant to the Plaintiffe, were pro-
d, the beginning and ending of it and the
ent, and it was of a houſe and land; the
ouncell and witneſſe on the other part
ove that a promiſe was then by the De-
ndant to put the Leaſe in writing, and the
laintiffe had beſpoken Indentures to be
ade for that purpoſe, yet it was ruled this
ould not overthrow this Leaſe Paroll,
hich now had been injoyed ten years.

2 ANonymus. It was holden now in a
Caſe of tithes, and defence made by
ivilege of the Ciſtertian order, which is
um propriis manibus excolunt, &c. Firſt,
muſt be for thoſe are owners of the Inhe-
tance of ſuch land. 2. It was holden that
truſtee of land, though another hath the
ſtate in Law is ſuch an Inheritor, and own-
r of lands &c. 3. This is not onely for
ands which in a common ſenſe are ſaid to

be tilled (*excoli*) &c. which would straiten unto arable, but meddows, &c. are within, and this privilege was for grosse tithes as corn, hay, &c. and did not extend to small tithes, and therefore the payment of these is no evidence to prove the great tithes to be due.

Wenpeny his *Case.*

93 IN an Action of false imprisonment the Defendant pleaded not guilty, and gave in evidence the warrant of a Justice of Peace to arrest the Plaintiff, and holden good evidence to maintain the issue though he is no Officer, who did execute this warrant. See the Statute of 7 *Jacobi cap.* 5. It seems this is warranted by words in that Stat. *&c.* any others which do any thing by command of Justice of Peace and other Officers there named.

Sir *Thomas Dauby* his *Case.*

94 IN Trespasse, a Prescription was to tether *equos & boves*, upon such a balke, which was the place where the Trespass was layed, if he use this with Mares or Cows, he may justifie it by this Prescription, for the Oxe and Horse are but instances, & the Defendant is not tyed up precisely to that kind

nd of beaſts in his plea, for the main mat-
r is that the graſſe there growing hath
en eaten by him.

Burleys Caſe.

Burley Parſon of *Croſton*, in an Infor-
mation of Non-reſidence, and a hun-
red pounds penalty demanded. 1 This
dge now ruled it againſt the Caſe of *Goo-
le*, in the Lord *Cokes* Reports, that a Par-
n remaining within the Pariſh in any
lace, though not in the Parſonage houſe,
no Non-Reſident within the Statute. 2 He
verruled it in evidence, that if he lived out
f the Pariſh for fear of an execution, as
he ſaid *Burley* here did, and that in an
lehouſe in the next Pariſh, that this was
ot within the Statute of Non-Reſidence.
Nota & quære hoc, for this Parſon had fa-
our, and the reaſon wherefore was well
nown to the proſecutor.

Aſſiſa tempore Quadrageſime
Vernon Judge. ann. 1637.

Tailors Caſe.

96 TEnant at ſufferance hath held land
a long time, and then his Landlord
dyed, and the heir was in ward to the King,

who granted the wardship to *I. S.* and ter this tenant at sufferance brought an ction of Trespasse against a stranger had done some Trespasse upon the lan and this appearing upon the evidence, Judge overruled it against the Plaintiff that he could not maintain Trespasse, it was said the possession of the Plaintiffe vanished by this title devolved to the Kn so that he cannot maintain trespasse.

Setons Case.

97 IN Action for tithes, and a Prohibi on brought upon this Prescription that time out of mind, &c. the sum of tw shillings nine pence had been payed for el ven doles of meddow, at three pence th dole, and the Case was that this was a sma piece of meddow taken off and inclos from a great meddow of which it was par cell, and the witnesses did prove that three pence the dole had been usually payed for the whole meddow, and that the eleven doles in question was parcel of it, and the Judge did direct the Law to be against the Plaintiffe, because he had laid his Prescrip tion intire two shillings six pence for the whole, and not three pence the dole, which doth amount just to so much, and upon this

direction the Plaintiffe was nonsuit. if it is not all one, as in *Mountjoyes* , 5 *Rep.*

Assisa July 1638. before *Barkley* Judge.

Lodges Case.

IT was holden in Case of a devise of land, that the shewing of the Will der seal, and proof that it was examined the originall is good evidence without ewing the originall will.

Holsworths Case.

AN Action of Trover & conversion was brought for oats, &c. & the se upon proof was, that certain trespas- rs had taken these oats from the Plaintiffe d brought them to the Mill to make into tmeal as the use is, and the Plaintiffe me to the Miller before any thing done, d demanded the oats as his, and forbad m to proceed to make them into shilling oatmeal, but the Miller did proceed for l that, and made it into oatmeal, and the dge directed this to be a Conversion in e Miller, and directed the Jury according- , although it was urged by the Counsell

of

of the Defendant, that a Miller was a p
lick Officer, and did but his duty in t
Case. And in this Case it was holden f
ther, that if *A* take goods from me, a
these afterward come to the hands of B
buying or otherwise, and he convert
them to his use, *B* shall not be charged
me without a new demand made of th
unto him, and a detention afterward, a
where such goods are delivered at first
the owner, and after detained upon dem
ding them, detinue lyeth and not trover
that Case. See *E.* 4. 23. 21 *E.* 4. 7
16 *H.* 7. 23.

Heaton against *Horner* and *Beck.*
Sheriffs of York.

100 IN debt upon an escape, an executio
was upon a Judgement had befor
them, and they made a Precept to their Se
jeant of the Mase to arrest the party again
whom the Judgement was, who did so, an
did convey him to prison, but no entrie wa
of this arrest in any book, &c. And after
ward the prisoner did escape, and the Judg
was of opinion that the Sheriffs were not
chargeable with this Action, but offered
the Counsell a speciall Verdict if they
would, afterward the question was ended,
be-

uſe upon examination, though he was is own houſe, yet this was within the les, and ſo no eſcape, *Si*, &c.

Wrights Caſe.

ACtion of Battery and wounding, and *de ſon aſſault demeſne* pleaded, not proved, the Judge thought the plea ve not good, as to the wounding, but ſhould have pleaded not guilty, as to t, ſee if now it is found for the Plaintiffe t no aſſault was, whether it ſhall not be od, and the Plaintiffe to have judgement, d ſee by me 21 *H.* 6. 27. where it is hol- n that for an aſſault upon the perſon of a an he may juſtifie wounding, &c.

Sir *Thomas Gores Caſe.*

HE brought an Action of debt for an Amercement in a Leet, and the eet was layed to be within ſuch a manor, c. but the proof was within a larger cir- uit, and holden not materiall, though the lace was no Manor but a Farm that is na- ned a Manor, ſo it be within the circuit the eet extendeth.

Jacklons Caſe.

103 IN Debt upon the Statute of 2 E
a Preſcription was made to pay
load of hay for all hay growing in ſuch
cloſe, and the Judg diſliked this preſcri
on, as where payment of a penny is plea
in ſatisfaction of twenty pounds, yet
left the tryall to the Jury, and the evide
did not prove the load of hay payed c
ſtantly, but ſometimes mony, five ſhilli
or ſix ſhillings, &c. as they could agree. I
ſee by me whether this money ſo taken
for the load of hay, the Rector was to h
had for the tithes, or for all the hay; if
firſt, the preſcription is not contradicted
but ſeems all one, as if the load of hay
ſelf had been payed, but this was not cle
red, and therefore the Jury found for t
Plaintiffe againſt the preſcription, and ſ
by me why the Preſcription ſhould not b
good to pay a load of hay, &c. becauſe
charge in making it, and alſo the loading
if that was the uſage ſo to do.

Tempeſts Caſe.

104 ARticles of agreement were made
betwixt owners of Colepits, and
the Covenants were extended alſo to bind
the

heirs of the Covenantors, which was
ettle accompts about the coals, and af-
ward one of them aſſigneth his intereſt,
And an Action of Covenant was
ught againſt the Aſſignee, and the Judg
ed the Caſe that this Aſſignment did de-
y the nature of this Action, which re-
res privity, and ſuch hereditary Articles
l not help, but are gone by transferring
intereſt, &c.

Boſwells Caſe.

5 A Man granted all his lands in *Dar-*
field, in the tenure of *I.S.* and part
theſe lands were in another town, *ſ.* in
mbell, but within the Pariſh of *Darfield*
e whole land was, and in this Caſe the
dg ruled that the whole land did paſſe,
d *Darfield* in the firſt clauſe ſhall be in-
nded the Pariſh of *Darfield*, and not onely
e Vill. *Quod notat.*

06 MIſtreſſe *Tempeſt* and her husband
were ſued upon a Bond made by
e wife, and *coverture tempore* &c. was plea-
ed, and to prove that evidence was produ-
d that ſhe was marryed, but he knew not
e Miniſter or Prieſt by whom, or if he
were

were in orders or not, and the Judg di
rect that he shall be well proved wh
Bond is to be avoided by it: and for
suspicion he was a Popish Priest, it dese
no favour, and his orders shall be shew
and that will be dangerons in another k
f. treason, and *he said he knew a No
man put sore to it to avoid bastardie in
like Case. In this Case the Jury was put
on triall, and in the end, if it could h
been proved he was a Priest though Pop
it was holden good evidence to prove t
marriage, but the Judg did *hæsitare* in th
whether proof was made that he wa
Priest, *Quære* what became of it.

Danby

Sir *Thomas Dawby* his *Case.*

107 SIr *Thomas Dauby* brought an Acti
upon the Case against a Paris
Clark, and in this Case it was admitted
read in evidence depositions taken in th
Ecclesiasticall Court, because the witnes
were dead, but it was denyed the Jury
have these depositions with them.

108 UPon an evidence at the Assises
where *non est factum* was pleade
to a relees, which was made to *A* and
and now it was given in evidence to prov
this deed, that *A* formerly in an Action
gainst

nst him had pleaded this Relees in bar;
the Relees was entred upon the Record
hac verba, and now that Record was
wed forth and read, being proved a true
ie. And this was admitted for proof of
s Relees for no other evidence was of the
ling and delivery of it.

9 ANonymus. In Action upon the Case in nature of conspiracy, it was forth how the Defendant had indicted n of Trespasse done, and unjustly vexed n, &c. And the Judg held it was a Case *ma impressionis* to have this Action upon Indictment of Trespasse, but suffered e Iury to proceed, but he did hold that meer acquitall upon this Indictment it not be maintained, but words must be t in the Declaration that signifie it was ogether malitious, & proof of it &c. for it med to the Judg, that notwithstanding s acquitall upon a Travers of the Indict- ent, or Ignoramus found, this Defendant any other may averr the Plaintiffe to be ilty in this Case of Trespasse. *Quod nota fferentiam* from the Case of acquitall for ony in such Case where once acquited, d see 20 *H.* 7. 11.

Sir

Sir *William Savils Case.*

110 AGainst the Master and Fellow
Sidney College in Cambridge.
Trespasse, the Defendant justified for
sture for a hundred sheep, and presc
that they and all whose estate they ha
Cridling Park time out of mind, &c.
Common &c. And it was holden a go
Prescription, for although it is now a Pa
yet this Prescription shall be intended
have Commencement when it was arab
See by me if it had not been better to h
layed the Prescription as owner of so m
acres of arable land, &c.

Assisa March 1638. before *Hende*
and *Vernon.*

111 ANonymus: One takes a distresse
goods (but shews no cause why
took the distress) & he put the distresse i
a close pound, *s.* a house, and the ow
brake the house where the goods were, a
took them forth again, and it was held
be lawfull in this Case of tortious taki
for so it was for any thing did appear.

Baracloughs Caſe.

12 IN Debt againſt an Adminiſtrator, and *plene adminiſtravit* pleaded, the dge did allow him to give in evidence, dgments precedent without pleading it,& *ard* Serjeant of the other ſide did yeeld it. It was alſo ruled, that an Acquitnce ſhewed in evidence for a hundred unds payed to a Creditor is good in diſarge of an Inventory, and if the debt was mpounded for leſſe then the Acquittance entions, this ſhall come on the other part ſhew, and the rather it was held ſo here, cauſe this Acquittance was from an Offir of the Kings for Cuſtomes due, and they o not uſe to take leſſe then is due.

Stanhops Caſe.

13 IN Action Caſe upon a Promiſe, the conſideration was layed that where e Plaintiff was indebted to the Defendant y bond, which was forfeited, they did aree that in conſideration the Plaintiffe had aid the Defendant eight pound *per centum*, r intereſt, the Defendant did promiſe he ould not ſue him upon that bond, &c. nd yet had done the contrary, and it was eld to be no conſideration to ground this

Action upon. See by me, becauſe the Sta-
tute doth not give eight pounds *per cent.*
but tolerates it, and doth reſtrain the in-
reſt from ten to eight.

Rogers Caſe.

114 AN Information was exhibited fo
ſitting as Commiſſioner of Sewe
not having land to the value of forty pou
by the year *prout &c.* 2 One of the Co
miſſioners names was miſtaken in the ro
tall of them, and for this cauſe the Plai
tiffe did not proceed in his tryall now.

Preſton againſt *Hall.*

115 THe Plaintiffe ſued as Adminiſtrat
for goods, and *Non detinet* wa
pleaded, and the Defendant produced in e
vidence letters teſtamentory of the ſam
man, who was ſuppoſed to die Inteſtate
and it was admitted as good evidence: ſe
Dyer 202. And if the Plaintiffe had replyed
that he made a Will, ſee whether and how
he can traverſe that he dyed Inteſtate, be
cauſe it is onely ſurmiſed being in a Decla
ration, that he dyed Inteſtate.

FH
MVSEVM
BRITANNICVM

Aſſiſa Auguſt 1639. before *Vernon* and *Henden* Judges.

Iackſon againſt *Simſon.*

116 DEbt upon a Contract, and for part of the debt a judgement by *Non ſum informatus* was given, and now *Nil debet* was pleaded in this Action for the reſt, and at iſſue upon that, and the Judge privily ſpake to the Plaintiffs Councell, and told them they could never have judgement in this Action, becauſe the Contract is intire, and the Court above will not admit of ſuch a diviſion of a debt upon a Contract. *Quære.*

Sir *Marmaduke Stricklands Caſe.*

117 THe Judge upon the evidence did declare in this Caſe which was debt for tithes, that if the land in queſtion was diſcharged in the hands of the Abbot at the time of the diſſolution, let it be which way it will, and without ſhewing how by union or the like, and if it hath ſo continued to be diſcharged, this ſhall be diſcharged, and the Statute of 2 *E.* 6. doth not give remedy but in ſuch courſe and manner as then he might have had. And he further held,

that if the Impropriation doe not come to the Crown untill 31 *H.* 8. yet if it were an Abby under the value mentioned in the Statute of 27 *H.*8 .and given to the Crown, the King ſhall be in now by the Statute of 27 *H.* 8. and ſhall not participate of the privileges given by the Statute of 31 *H.* 8. for diſcharge of tithes. This was concerning the Priory of *Watton.*

118 ANonymus. Caſe in the City of York tryed in an Ejectment for the Plaintiffe was given in evidence, a deviſe of a tearm for 60 years of the houſe in queſtion, and a Proviſo was in the Will, that the Deviſors wife ſhould have it for 21 years which ſhe did enjoy, and now ſhe was admitted a witneſſe to prove this Will, becauſe her term was expired, then the Defendant would have proved the Deviſor was deceived, becauſe he did declare his intent to grant ſuch a term in truſt onely, and the Leſſee himſelf did direct the Deviſor to make his Will ſo and ſo, &c. but the Judge would not permit a Will in direct words to be ſo overthrown at an evidence, but bade them if ſuch fraud and matter was to ſue elſewhere. And note, this witneſs which now gave evidence was by at the Will-making

king, and ſaid nothing then to the Teſtator of the matter now ſuggeſted to hinder his making the Will in expreſſe words, as now it was ſhewed, and this did weaken his Teſtimony much that he would then ſuffer it to paſſe, and now ſwear an intent otherwiſe. *Quod nota.*

Holburies Caſe.

119 IN *aſſumpſit* for ſix pounds for a Debt and now four pounds onely proved, and yet ruled for the Plaintiffe: and if he bring a new Action for four pounds, as upon another Contract, the Defendant may by an averment bring this Recovery now had to be for the ſame debt, and ſo barre him: which was the onely objection in the Caſe at the Bar, that the Defendant was in danger to be doubly charged, which is taken away by the reſolution aboveſaid.

Scots Caſe.

120 IN an Action of Trover the Caſe was, that a diſtreſſe had been taken for dammage feſant, and the dammages demanded were tendred being an involuntary Treſpaſſe. It was now held that a detainer after this tender ſhall not make him guilty

of Trover and Converſion in this Caſe coming lawfully by the goods at firſt.

121 IN the Caſe of a Way, the Judg ruled it for Law, that it is a good Preſcription that he hath had a Way over ſuch a piece of ground, called Black acre, &c. without ſaying, From ſuch a place to ſuch a place or mentioning the ſeverall particular paſſages all along to bring him to the place in queſtion (as the common form is in ſuch Caſe) but its beſt to go ſhortly to the place that is in queſtion, which is great eaſe in pleading, and prevents much danger in the proof. *Quod nota.*

Richardſons Caſe.

122 IN Treſpaſſe, tender of two ſhillings ſixpence in amends was pleaded, and averred that the ſaid ſumme was ſufficient, this upon the new Statute of 21 *Jac.* and iſſue taken upon the ſufficiency of the amends. In this Caſe the Defendant began the evidence to prove the amends ſufficient and was directed to ſhew the Treſpaſſe, what it was, and prove the tender, &c. and the Plaintiffe in this Caſe was not permitted to ſhew or prove more Treſpaſſes then one of which he hath declared, and that the

e Plaintiffe ſets forth ſhall be the Treſpaſs nd not that the Defendant ſets forth if ey vary; then the Plaintiffe did prove it as to the value of five ſhillings, and the efendant would have left it to the Jury, hether the Treſpaſſe of two beaſts in A-ill, in graſſe ground could be of that va-e, but the Judg would not permit it ſo or the Jury to judge, as if no proof was hen the witneſſe had expreſly proved it o the value of five ſhillings, when the De-endant had failed to make proof what the reſpaſſe was ſo to apply his amends ten-ered to that Treſpaſſe, in which he had ailed before.

Blesbies Caſe.

123 A *Aſſumpſit* for ten pounds lent mo-ny, and *Non aſſumpſit* pleaded, and he Judge gave way in this Caſe to prove ayment before the Action brought, which f the Defendant can do then there was no onſideration to charge him in this A-ction.

Portingtons Caſe.

124 IN Dower *Ne unques ſeiſie que dower* was pleaded, and in proof of this the enant ſhewed that there was a bargain and

ſale made to the husband by one Cook, a
it was injoyed divers years, but the aſſu
rance was never perfected, during the life o
the husband, and by the Judge it was ſai
that he would intend the husband to be i
poſſeſſion by diſſeiſin, and not as tenant a
will, and then the iſſue is for the Plaintiffe
And note in giving the verdict by direction
it was found ſo many acres of land, ſo ma
ny of meddow, &c. then the yearly value
then a third part rated for the time the
dower had been withheld after the Action
brought, and twenty ſhillings by year wa
given for that detention, the husband dying
ſeiſed.

Prieſt againſt *Gaunt*.

125 IN Debt upon a Bond to perform an
award, and *Nullum arbitramentum*
pleaded, then the Plaintiffe by replication
ſets forth the award made *in hæc verba*, and
then aſſigned a breach, the Defendant can-
not now joyn that he hath performed
this award, but muſt now demur upon the
Replication, for that the award is not good
in Law; or elſe in his plea in Barre at firſt
ought to have confeſſed ſuch an award was
and that he hath performed it: for if now
in his Rejoynder he ſhould agree there was
an

ward made he should crosse his own
a, and therefore because in the Case to
e tryed he had rejoyned that he had
formed the award set forth in the Repli-
ion, It was held a Jeofail and a Juror
hdrawn, and the proper way was in such
e for the Plaintiffe to have demurred up-
such a Rejoynder. *Quod nota.*

Pasman and his wife against *Fletcher.*

6 FOr saying to the Plaintifs wife these
words, You had a bastard in Lon-
n, and go thither and have another, and
e Judge held the Action would not lie,
t see because of the variance may be in
ch Case between the husband and his
ife, which is dammage, &c.

Bovell against *Sherwood.*

7 IN Action of false Imprisonment, the
Case was an order of Sessions of
eace was made to deliver and set free such
n Apprentice from his service because of
usage, &c. and oath was made that the
aster would not perform the order, and
hereupon a warrant issued to arrest him,
nd he was taken within the liberties of St.
eter at York by the Defendant a Consta-
le of the City, but the place was within the
Coun-

County of the City as a great part of th
liberty was, and upon the evidence the Gr
ler could not produce the Justices warra
for which he was shent; it was then said f
the Defendant that the Statute of Appre
tices was not pursued, and if it were, yet
was held that such a warrant by one or tw
Justices of Peace after the Sessions upon
order made in the Sessions was not good
but it shall be made in the Sessions upon
contempt to their orders. Then it was urg
that they ought to find for the Defendan
because the Action is laid in the County
large, and not in the County of the City,
it ought by the Statute being against an Of
ficer: but the Judg held that was not ne
cessary, but in Case where the matter give
in evidence would have been good in justi
fication if it had been layed in the prope
County, and is onely naught because laye
in a forain County. *Quod nota*, but the
Judg did not peremptorily adhere to it.
Then it was said its against the Defendant
because he hath entred into this liberty.
Quod quære by me being within the Coun
ty of the City, and seems a Trespasse onely
to the liberty, and makes not the arrest ille
gall, and for that point a speciall verdict
was, but see the conceit aboveſaid of the

Judge

ge would take that which the Statute
ers, *sc.* that the Action shall be layed in
proper County, or else the Defendant
l be found not guilty in case of an Offi-
without justification at all. It was mo-
in this Case, if the Defendant be a great
n as Maior of a City, &c. which is a
unty, whether the Court above cannot
er an Action in such Case to be layed in
orain County, because of the inconve-
nce of favour there &c. and it seems that
Court may do it, for the Law provides
ly for the generall mischief onely, but
on speciall reason it may be done, and
he Judges do practise upon the Statute
H. 4. of Actions to be layed in the pro-
County, yet upon good reason, as where
e party is a man of great power in that
unty they will order it to be layed in a-
ther County.

Assisa 15° *Car.* before *Henden* Ba-
ron of the Exchequer.

Duncalfes Case.

IN Action, Trover of Corn, and the
Plaintiffe shewed in evidence a Re-
very in a Court Baron, this being copy-
old land, but it was holden this was mat-
ter

ter of fact onely, and it ſhall not bind a
ter title found now, and the Defend
title now was a ſurrender, but the poſſ
on hath gone long, *ſc.* from the 33 *E*
when the ſurrender was with the heir of
ſurrenderor, *ergo.* But this ſhall be intend
but to ſome particular purpoſe it did
continue, or that it had been ſurrend
back again, for ſeverall heirs of him who
make the Surrender had been admitte
therefore the Judg thought the Jury ou
to find againſt the Surrender, but a
ſtayed till better ſearch could be made
the Court Rolls.

Solomon Swails Caſe.

129 IN Debt upon the Statute of 2 *E.*
for tithes *Nil debet* was pleaded, a
upon the evidence it appeared the Prior
Bridlington was owner and Proprietor
the Rectory of *Southſtavely*, within whi
was a Grange called Caton, which was t
Iuheritance of the Abbey of Fountain
which Abbey was of the Ciſtertian orde
and the Abbot took a Leaſe of the moity
the tithes of this Farm of the Prior at t
rent of twenty s. *per annum*, and one *Vave*
and another did farm the other moity
the tithes of the ſaid Farm, and then t
Prior was attainted, and this Rectory ca
by

hat means to the Crown, and after in
*H.*8. the Abby of Fountains came to the
wn, and King *H.* 8. did demiſe this to
of *Bardſey* for 21 years at the rent
wenty ſhillings the Leaſe of the moity
he tithes, which the Abbot held in Farm
g extinct by the union aboveſaid of the
m and inheritance in the Crown. Af-
ward *H.* 8. 36. of his Reign did grant the
tory of *Stavely* aforeſaid with large
ds, & then recited, *quæ quidem*, &c. are
he value of twenty ſhillings *per annum*,
the King then had the rent of 20. s. *per*
received by the Prior upon *Vaveſors* Lees
his did appear upon the evidence, and it
reſolved that this *quæ quidem* in the
nt doth not overthrow the Patent,
ugh the value be miſtaken, but onely
tanto, as was the miſtake, and this by way
epriſer of it in the Exchequer, ſee the
tute of 43 *E.* 3. 2 This part of the
s demiſed it ſeems ſhal not paſs without
preſſe recitall of the Lees, and rent reſer-
thereupon, for elſe it ſhould be hard
the King, and this Caſe was put, if the
ng have land and a Cole mine there, and
King grant the land by name, which in
w doth paſſe the Cole-mine, yet in his
ſe it ſhall not do it, ſo not by grant of
the

the Rectory this in Lees shall not passe. the Statute 31 *H.* 8. which aids mistak the Kings grants if his intent may appe ny way, and it was said that no Case c put out of any book in print that any grant was overthrown for any mistake, if cause be to aid the King upon a mis yet his undertenant shall not take a thereupon, but he shall pay his Rents, t &c. to the Patentee as if the grant good, and possession is good title as ag him, *Quod nota per totum.*

Spofords Case.

130 A Juror was put by after he sworn because of kin to the Pl tiffe, &c.

Sir *Michael Wharton* against *Portingt*

131 THe Defendant held land by lee the Plaintiffe in which was a c dition to enter for nonpayment of the r and the Plaintif sent his servant to dem the rent, who came upon the land none habiting there and spake thus Manor o pay thy rent of ten pound to Sir *Mic Wharton* for the Rent due at Lady day l and a speciall verdict was found whet this was a good demand or no.

Ej

Baynes against *Robinson* Sheriff of the County of Lancaster.

IN accompt, and the Case was thus, the Sheriffe had received two executions against two severall persons twelve pence in the pound of the Plaintiffe. It was held that a Sheriffe cannot take mony for fees upon delivery of warrants generall to his own Baylies, but must expect till the mony be levyed. 2. It was declared that in the Common Bench, there is not taken for Fees upon executions twelve pence in the pound, and six pence for every pound above as is in the Kings-Bench but onely six pence for every pound, *Quod nota differentiam.* 3 Here when the Plaintiffe had his writs of execution, he sent them to the Sheriffs Bayly, who willed him to put in what Bailies he pleased, who named three or four speciall Baylies. It was held this was a naming by the Plaintiffe himself of his Baylies, and in such case the Sheriffe may take his fees presently. Lastly, it was held if mony is received by such speciall Baylies of the Plaintiffe wrongfully by color of this Officer, an Action of accompt lieth, and it is not necessary it be delivered for accompt render, &c. in this Case a speciall

ciall verdict was offered to be by the Jud
but Counſell could not agree about it, a
ſo the Plaintif was nonſuited with mu
diſcontent.

William Mettams Caſe.

133 IN Debt for tithes, and Defendant
his defence ſhewed a privilege by t
Ciſtertian order, and deed without da
was ſhewed taken out of St. *Maries* tow
in York, upon which there was written d
tum, but no more, no year, &c. and t
deed was further *tenendum de capitali*
dom. feodi, and for both cauſes the Jud
thought this an unfaithfull Record, and di
conceive it was made after the Statute
W. 3. d. *quia emptores terrarum.*

Roberts Caſe.

134 ACtion falſe impriſonment, the Ca
was, he being in execution in t
County of Lancaſter did deſire to b
brought into the County of York to ſpea
with his friends there, ſo to make way fo
his delivery, and being in Yorkſhire di
endeavour to eſcape, and the Defenda
commanded to ſtay him, and ſo he was bol
den a principall impriſoner as well as thoſ
laid hands on him, and in this Caſe it wa
di-

irected to find againſt all the Defendants, ecauſe they had pleaded not guilty, but therwiſe it had been if they had pleaded he matter aboveſaid ſpecially ſ. that the riſoner was brought into another County t his own deſire. *Quod nota,* and the Juors did help the Defendants in this Caſe, nd gave but two pence dammages for the eaſon aboveſaid, becauſe he was brought pon his own requeſt.

Sir *Arthur Robinſons Caſe.*

35 IN a Prohibition, and the Preſcription ſuggeſted was to pay a rate tithe of thirteen ſhillings four pence, for all land, &c. and for profits of a Mill, and in evidence the witneſſes proved ſeverall ſmall ſummes payed as five ſhillings, two ſhillings, &c. which in the whole came to the juſt ſum layed in the Preſcription, and it was holden no good proof by the owner of the inheritance, otherwiſe it had been if theſe ſeverall ſummes had been payd by the ſeverall tenants of ſeverall parcels of the land in queſtion. And in this Caſe it was held if ſuch a Preſcription is laid for an hundred acres, and the Plaintiffe fail in the number, it is doubtfull whether it be not a failer in proof, the beſt way is to lay it that,

it hath been payed for such closes, &c. b
name; and in this Case it was held clearly
that no proof being to extend this
payed for the Mill, the Plaintiffe did fail
his Prescription in all.

Sugden against *Cattell.*

136 DEbt upon 2 *E.* 6. The Case was
the Defendant had stocked u
woodie grounds and sowed it with corn
and the question upon the Statute of bar-
ren ground &c. and the Plaintiffe did prove
that tithes had been paid for this before
the stocking it up for sheep, &c. and also
proved it was worth four shillings the acre
before, and for this the Action went against
the Defendant. See what shall be said bar-
ren ground, &c. If eight pence or twelve
pence the acre will make it so to be free of
tithes.

Sir *Ralfe Hansbies Case.*

137 IN Trespasse for breaking his close,
digging coales, and taking away for-
ty loads of coales there digged and layed
the Trespasse 1° *Julii* 14. *Car. Regis* until
November 15. *Car.* with a *Continuando di-
versis diebus & vicibus*, but the Plaintiffe
could prove no reentry, and for that Case
it

it was resolved he could recover no more but for the first entrie, and nothing for the coales taken away, and this will hinder nothing in another Action for the coales taken, but is a distinct Trespasse, but as to that because he is out of possession of the land, what Action shal he for the coales in such case, see if trover lies, because a Chatel and the property in that Vests presently without demand, &c. for so the Case was of *Berry* and *Herd* for the bark of a tree which a Lessee cuts down, the Lessor shall have an Action presently.

138 ANonymus. Action for words, one said to a younger son, Thou art a Bastard, and this was in the life time of his Father, and Plaintiffe shewed his Father took a great displeasure at him upon this, and made his Will and gave him nothing: See if an Action will lie for this casuall remote hurt, for it did not appear the Father was dead, but it was proved after this he was used hardly by the Father, the Judge doubted if actionable. See by me Coke upon *Lit. fo.* 243. where the younger son is called *heres remotus*. *Quære.*

Aſsiſa July 16. *Car.* before *Foſter* Judge.

Doctor *Micklethwarts Caſe.*

139 IN Debt for Rent, the Caſe was thus, a Lees is in being and then the Leſſor demiſed to another in Auguſt, *habendum*, from Lady day before for a year rendring rent at Michaelmas following, the firſt Leaſe doth not end till October, and the ſecond Leaſe was by paroll onely, and the Judge in this caſe held that this Michaelmas which falls out between the two Terms is a good rent day of the ſecond Lees, and it ſhall be payed.

140 THe Judge would not ſuffer a grand Jury man to be produced as a witneſſe to ſwear what was given in evidence to them, becauſe he is ſworn not to reveal the ſecrets of his companions. See if a witneſſe is queſtioned for a falſe oath to the grand Jury, how it ſhall be proved if ſome of the Jury be not ſworn in ſuch caſe, and in a Caſe betwe en *Hitch* and *Mallet* ſuch a Caſe was about an oath made before a grand Jury, *Quære* what became of it.

Smiths

Smiths Caſe.

141 AN Executor aſſumed to pay a debt of the Teſtators, it was holden hat this ſhall bind him though he have not ſſets, and this he ſaid for law however dif-erent opinions had been in ſuch caſe. ee Caſe *Banes* and *Pinchons* Caſe, *Cokes ep.* ſeems to be contrary.

142 A Record in an inferiour Court was rejected in evidence, and put to rove it now, what was then done in the nferiour Court which was the Corporation Court of Beverley.

143 DEpoſitions in Chancery of witneſſes were refuſed in evidence by the udgs. and Copies of Record ſworn true were not permitted by the Jury to be taken way with them, as deeds under Seal uſe o be.

Iohnſon and his wife againſt *Stanclif.*

144 IN an Action of conſpiracy for inditing the Plaintiffs of felony, and the Defendant in his defence did prove he had goods ſtolne, and thereupon did prefer an nditement, which was found Ignoramus,

and then it was proved that he did prefer the second inditement after he had notice the goods were taken by another, and pawned to the Plaintiffe, and for this the Jury found him guilty, and that malice was in this prosecution, which is the chief cause to maintain this Action, and moreover it was proved that the Defendant had brought Actions at Law, which was a civill proceeding for the same goods supposed to be stoln which was urged to shew the malitious prosecution, but for this, the Judge held this of it self would not maintain this Action, for the party whose goods are stoln, may proceed both waies without malice, and also it was held a second Inditement may be preferred upon better evidence without making the prosecutor liable to this Action, so note it was the notice of the matter abovesaid onely did maintain this Action, but see by me how the Defendant was bound to beleeve such notice, &c.

Falls Case.

145 THe Condition of a Feoffement was to pay 12 pound at Michaelmas next, and so every year, &c. And after such default the Feoffement to be void. And by the Judge it was ruled that it is uncertain

ertain in this Caſe when reentrie ſhall be
ade, and upon this the parties referred
he matter and a Juror was withdrawn.

Kirbie againſt *Emerſon.*

146 AS*ſumpſit* upon an *in ſimul compu-taverunt*, and *Non aſſumpſit* pleadd, and the Plaintiffe produced a writing igned without ſeal which teſtified the debt o prove his Caſe, but it was held no good vidence, for it is another thing, and he hould have declared *Quod indebitatus ſſumpſit* &c. and upon this the Plaintiffe was urged to be nonſuit.

Ramſdens Caſe.

147 AS*ſumpſit* for twenty pounds upon accompt, and upon the evidence it did appear to be another ſum then twenty pounds, and it was ruled againſt the Plaintiffe, and he was nonſuit, and the Judge held where an Action is for tenne pounds upon a Contract for a horſe, and the witneſſe doth not prove the very ſum, but differ a penny or twelve pence, in this caſe it ſhall be found againſt the Plaintiffe, and cited the opinion of *Walter* Chief Baron to be ſo, but for the importunity then was contented a ſpeciall verdict ſhould be found. But the Court above did rule the

Case against the Plaintiffe. *Quod nota* in *assumpsit*, where dammages onely are to be recovered, for in such case if debt had been brought it is clear, because he doth not hinder the Contract it shall be against the Plaintiff.

Arlush against *Collison.*

148 IN Debt upon a Bond, and *plene administravit* pleaded. It was held no good evidence to prove the Defendant had passed his promise to pay *I.S.* his debt due by the Testator before this Action brought, but otherwise if he had given his bond for it: and if an executor renew a Bond which his Testator had entred as surety onely, this is no such administration as will make this plea good against other creditors by speciall tie, and this was the Case now, and it was upon this direction found for the Plaintiffe.

Bateman against *Howlesworth.*

149 *Assumpsit* to perform an award, and *Non assumpsit* pleaded, and the Plaintiffe shews an arbitrement & assigned a breach in not payment of ten pounds awarded, and holden that it is sufficient in this Case for the Plaintiffe to prove this *assumpsit* without any proof of the mony payed of the Arbitrement

yed. 2 It was holden further that the umpsit in this Case being three hundred unds, the recovery in this Case shall not the whole sum of three hundred pounds t onely so much as he is damnified now, the ten pounds or to the value of what o-er thing is now arbitrated, *Quod nota.* Quod nota

50 IN an Action of *Wast* a Juror was withdrawn for that two viewers did ot appear but one onely, whereby as by aw two ought to have the view.

Lord *Whartons Case.*

51 A Deed of uses was lost, and to supply it evidence was given that the ost deed had formerly been shewed in evidence in the Exchequer upon an alienation here questioned, the land being holden *in apite*, and the Record thereof was shewed, nd this was allowed for evidence.

Aßisa March 16. *Cor. Whitfield* Serjeant Judge.

Mistresse *Stapletons Case.*

152 HEr husband made a conveyance to his own use for life, the remainder to his wife for life, the remainder to another

ther in fee, the wife did joyn with her husband in a Leaſe for years, rendring rent, dyed, and ſhe accepted the rent and was found ſpecially, becauſe it was doubted that the wife not having any preſent ſtate to contract for, nor the preſent ſtate to make acceptance, whether ſhe ſhould be bound, ſhe had entred here in this Caſe for rent behind upon the term of the land.

Blockly againſt *Croſt.* *Lg*

153 THe Defendant did claim a Gallery which was above certain tenement being Chantery land in the City of York and it was claimed as parcell of another houſe or belonging to it, which houſe the Defendant had neer adjoyning to the tenement where this Gallery was, but was divided by a little lane, and it was found for the Defendant. *Nota*, this manner of freehold in an upper Gallery, and alſo part or belonging to another diſtinct houſe.

Beamſleys Caſe.

154 HE declared in an Ejectment of one acre of land, and one of Paſture, and the witneſſe proved three acres of land, and three of paſture, and no exception taken to this, ſee here fo. more of this matter. In this Caſe an ancient Will was given in

to

idence proved in the Eccleſiaſticall Court
t the original was not ſhewed forth, nor
y proof that this under ſeal had been
amin'd by the original, nor by the regiſter
ook (Se if that had been ſufficient) & it was
olden no good evidence to prove this Wil
t holden further if the hand of the pub-
ch Notary. which was to the Will under
eal, had been proved it would have ſerved.
Nota, and ſaid it was a crime in the Officers
f the Eccleſiaſticall Courts, that they took
ens Wills into their hands which they
ught not to do in caſe of lands contained
n them, and by him if they loſe them they
muſt anſwer it in an Action for damma-
ges to the value of the land, and proof
hat there was ſuch a Will in writing ſhall
erve againſt them. *Nota.*

Dickenſon againſt *Malliverd.*

155 HE avow for damage done, &c, and
hiſſue joyned upon the freehold &
the Plaintiffe did allege the Defendant had
made a Lees before the caption, and holden
no evidence, but he ought to have pleaded
it &c. and for this cauſe the Plaintiffe was
nonſuited, but the Jury did enquire of
the dammages and coſts by direction of the
Court, and ſo is the practiſe in Replevins.

Pro-

156 PRohibition. A *Modus decima* ſurmiſed, *ſ.* to pay five ſhillings yearly for all fat cattle, oxen, and for mares horſes and other unfruitfull cattle a halfpenny, called Growth halfpenny, and the witneſſe proved all this, but ſwore further that for draught oxen of the Plough, one penny for every Plough was payed, and it was holden the cuſtom ſufficiently proved; for theſe oxen of the plough are barren, but not unfruitfull, ſo out of the former number and preſcription, but the Preſcription was holden abſurd in one thing, that it was layed *Quod quilibet inhabitantium* ſhould pay for fat cattle, &c. within the Pariſh, and did not ſay *ſuis*, ſo by this preſcription he ſhould pay for others cattle, which is not reaſonable, and the Plaintiffe upon this was nonſuit.

Stanhops Caſe.

157 IN Ejectment. The Leaſe being of *Stritcars*, *Winmorehill*, and 6 acres of land, it did appear upon the evidence the Leaſe was delivered upon parcell of *Stritcars* cloſe in the name of all, and in the declaration miſtake was in the name of the cloſe, for it was written *Strtker* which ſig-

nifie

e nothing for want of a vowell, but the
er two were right, but becauſe the eje-
ent was proved in *Stritcars* onely, it
s doubted, and the Attorny was blamed
the Judge to be ſo careleſſe, and ſaid the
ming the cloſes was worſe, and better to
t this by name of acres, but after it was
ed good for the other two parcels for
livery of the Leaſe in Stritcars, and alſo
e Ejectment in this parcell is of all, becauſ
e name of the cloſe is right in the leaſe,
ough miſtaken in the Declaration, but if
had been miſtaken in the leaſe it ſelf, it
d been ill in all the reſt.

Tennes Caſe.

58 THe Defendant pleaded ten ſhilling
tendred in ſatisfaction, and averred
his ſufficient pay, and the Treſpaſs was
aid to be in May, July and October ſuch a
ear, and this the Plaintiffe did endevour
o prove, and ruled he ſhall prove the ſe-
erall Treſpaſſes, and ſeverall daies *pront* in
he Declaration, and by the Judge it had
een better to have laid the treſpaſſe ſuch a
day and the reſt with a *continuando*.

Staf-

Staffords Case.

159 HE was a Tayler, and was ind[icted] of Treason for compassing [the] Kings death, and for treasonable wor[ds] which were these: The King goes to M[ass] with the Queen, I will prove it upon h[im] cord, and such a King deserved to be h[ang]ed, and *Lessely* is a better man then a[ny] in England, & but for him the thirty tho[u]sand Irish Souldiers would have come [to] cut all our throats, one witnesse did pro[ve] the very words, & the examination of an[o]ther upon oath was read, and the Ju[s]tice of Peace was examined upon oath to prove that which the witnesse swore befo[re] him, the Jury found the Defendant not guilty.

Jennings against *Chauntery.*

160 TRespasse. A Fine was acknowledg[ed] ed by one *Broughton* owner of the land, & the Conusee did grant & render to *A* and his wife for life, the remainder to the right heirs of the husband, and two years after the Conusor did declare by in[den]denture the use of the Fine to be to the husband and wife for life the remainder to the wife in fee, she being his bastard, and if

this new declaration shal crosse the grant
d render was the question, and it seems
hall not, but the regrant in the Fine shall
ount to a Declaration of the use, and it
all be intended done by the procurement
the Conusor of the Fine himself. *ergo.*

Assisa August 23. 1641 *Whitfield* Judge.

Foswick against *Bulmer.*

61 PRohibition. And the privilege of
the Cistertian order came in questi-
n, the land was parcell of the Abby of Ri-
ux, & no tithes had been payed time out
f mind, &c. nor were any payed at the
issolution of the Abby. And upon the e-
idence the Judg did spare the giving in evi-
ence *dum propriis munibus excolunt*, for he
eld it sufficient to shew the discharge of
ayment of tithes time out of mind, &c.
nd albeit, the order is put in the declara-
on, which is sufficient of it self, this shall
ot hinder, but he may have advantage of
e Statute of 31 which is the best course.
eeby me because himself takes upon him
o shew the reason of the discharge of the
ithes, this may preoccupate the reason of

Law,

Law, and betakes himself onely to this
charge by order, in which Case no ot
way shal be presumed for discharge. *Qu*

Ward against *Metcalfe.*

162 ACtion for not scowring a ditch
which the water overflowed h
land, &c. and declare that *Quidam riv*
run there, &c. and upon the evidence it
appear onely a land flood, and this adm
ted good by the word *Rivus*, though it
dry a great part of the year, and in this
was held better pleading of the cou
of this river, to put a place from whe
this River did come, and so to t
Plaintifs land without mentioning me
places by which this passeth, which may
many and ought to be proved if layed.

Lambs Case.

163 TRespas for mean profits & layed h
ACtion before his reentrie, wch w
upon the ending of a Lease made by him,
also after his reentrie with a *continuando* fo
half a years space; and no second reentri
was laid, and for the Trespasse, becau
none was at the first a speciall verdict w
directed, but the Plaintiffs counsell wou
not venture to have the dammages found
inure

ntire, *f.* for the continuance after the first ntrie, because no reentrie was, and then if ill n part, it will be in all. *Quod vide.*

Harlands Case.

164 HE was an Inne-keeper in York, and was sued for certain clothes, and ight pounds of money embesilled out of he Inne, and the Case was, the Plaintiffes ere souldiers, and had continued there 4 daies, and it was urged that they ere no guests, &c. but the Judg overruled , and denyed the Law to be as it is holden n *Caleis* Case 8 *Rep.* which ties the aboad f a guest to three daies, and if aboad is onger, it shall be said a commorancy, for y him upon occasion the time may be lon- er as a Lawyer at the Assises, Gentlemen t a horse-race, &c. and now souldiers bil- eted *pro republica*, &c. and it was holden hat though an Inne-keeper say he will not eep the guests goods unlesse he will put hem under lock and key, &c. this shall not elp the Innkeeper, for he is bound by w to keep them safe, and so it differs om packs put in an outyard, &c. there uch words wlil serve the Innekeeper, see

H *Assumpsit*

165 A *Assumpsit* upon an accompt, ... the proof was, that the Plain... servant did demand such sum, *prout* &c. ... the Defendant who did acknowledge ... debt, and this was holden good evide... *Quod nota.*

Watkinson against *Bird* and other two Constables.

166 IN Action of Trover and Conver... and not guilty pleaded, the Defe... dants shew a warrant of a Justice of Pe... to distrein for a Constable lay at the ... of one penny by the acre, and it is not ... for what the lay is, and this was held ... generall, and the Constables accompt ... produced, and in the head of the tax w... put for coat and conduct mony, &c. ... many unwarrantable things &c. and it ... held to be no excuse in this Action, ... where the mony levyed is disbursed und... as for the Constables pains, &c. and ... this warrant cannot excuse, because ... is for such a tax, nor hath the Justice ... Peace power to make such a warrant to ... strein, but if a tax be just, &c. and it be ... payed by the inhabitants, let him comp... to the Justices of Peace, and if they kno...

not how to help it, the Judge said come to him and he will tell them, &c. which was a put off, and it was spoken at the Barr that the Justice himself who made such warrant to distrein is lyable to an Action.

Campion against *Thorpe*.

167 UPon the evidence the Case was, that *William* Lord *Burley* made a conveyance, in which power was reserved to make Leases, reserving so much rent or profit as formerly had been reserved upon every demise for twenty one years, or three lives in possession onely. It was first held, that lands in the possession of him who made this conveyance may by this power be demised without rent. 2. If severall parcels are demised in one lees (as here) and severall rents upon each of them, and some more and some lesse then usually before or at time of making this conveyance, &c. but the intire rent or profit is reserved in the whole, yet this is not good, but ill, for those have lesse rent put upon them, and good for the others. 3. Here one piece of land was demised with another, and no more rent put upon it, and holden not good, though it do not appear any thing had formerly been reserved to the Lord, but some-

ſomething given the Baily for the other. 4. In former Leaſes the Coppice woods had been reſerved to the Lord in a piece of land called the Park, for which forty pounds rent was then reſerved, and now demiſed for the ſame rent with the Coppſes added, and this was not inſiſted upon, becauſe void for the other point, and for the Copps, it ſeems leſſe profit in this Caſe, though perhaps Rent is not reſervable out of them, and the power is, that the ſame rent or profit ſhall be reſerved. 5. If a Bailif who hath the letting of Farms do demiſe a Farm and reſerve part to himſelf, and raiſe the whole rent to the Lord of the reſidue of the land, this is not the rent or profit to the Lord formerly reſerved.

168 ANonymus. In treſpaſſe, the Defendant juſtified by licence to carry and recarry over the Plaintiffs land, &c. The evidence proved that the Defendant came to the Plaintiffe to requeſt leave of him to come over his land with his Packhorſes, and he ſaid, Come and welcome, but ſaid not *toties quoties*; and by vertue hereof the Defendant came often over the Plaintiffes land, and the Judge left this to the Jury whether the Plaintiffs intent was

o grant leave to come once or often, &c. nd they found for the Defendant. See if he grant here ſhall be by intent taken *to-ies quoties* if it ſhall be good licence by word, becauſe it amounts to an eſtate for ife, and ſo a freehold, which is not good hough for once it may be by word onely, nd ſee this matter left to the Jury was pe-illous, being matter beyond the words of he grant.

Aſsiſa Aprill 8. *Car.* *Whitfield* Judge.

Sir *John Bucks Caſe.*

169 HE was Sheriffe of the County of York, and had returned too ſmall iſſues upon a *diſtringuas nuper vicecomitem*, c. Sir *William Robinſon* his predeceſſor, the iſſues were five pounds at one time, and three pounds another, and ſix ſhillings eight pence a third time, the ſaid Sir *William* be-ng a man of a thouſand pounds *per annum*, nd now a Writ of averment came to this Judge founded upon the Statute of *W.*2. to enquire of this, and it was holden, though this *diſtringuas* came in winter to the Sheriff, at which time little value of lands doe ap-

pear, yet this doth refer to rent daies, as the rents are the issues, and though he have not received his Rents, or is distrained of them, or the profits of his land by Souldiers, &c. yet issues shall be as the rent is reserved if he hath not released them, and it was now found that he had returned too little issues, and that he might have wel returned forty pounds every time. *Quod nota per totum.*

Shellitoe against *Horsefall.*

170 DEbt upon a bond of four hundred pounds against the Defendant, as executor of one *Cooper*, and it was dated thirty five years since and no suite commenced nor interest payed in all this time; and for these reasons it was held by good construction that this bond shall be intended to be payed, and the Judg said the usage was so in such Cases, and the Jury found accordingly.

171 ANonymus. It was holden in Battery or Trespasse, that it is not material whether the Action be laid before the time the Trespasse was done or after, so as the Trespasse was done before the Action brought.

Beaumonts Case.

IN *valore maritagii*, and the tenure was specially laid, and holden it shall proved in all as it is laid, but by other uncell it was held sufficient to prove so ich as proves a tenure in Knight service, ough it differ from that laid, but a spe- ll verdict was found upon this. See by eif the difference is not in this Case for e point abovesaid, where Traverse is of e tenure, and where *hors de son fee* is plea- ed, see 2 *H.* 8. 21. & 9 *Rep. Bucknalls* ase.

A

Dean against *Longbotham.*

A Copiholder surrenders his estate in fee, conditioned to pay an hun- dred pounds to *B*, and fifty pounds to *C*, and upon failer of payment the use to be to *I.S.* the mony is not payed, he in the con- tingent limitation enters, and a speciall verdict found in this Case, because it is a Remainder upon a fee simple and 2. no ad- mittance was in the Case.

A

Lownsdels Case.

174 IN Trover of four Buts of oyle, the Defendant took upon him for wages to carrie this oyl from the water side at *Wakefield*, and he did deliver them there but the owner could not come by them because were imbesilled. It was holden that this Action of Trover doth not lie against the Carryer, but he shall be put to a special Action upon his Case.

Leakes Case.

175 A Man hath two closes called by the name of the Spring Close, but originally these were but all one close and by his Will he devised a close called Spring-close, and it was held by the Judge that onely one of these closes shall passe, but the Jury found for both to passe against the opinion of the Court, and the Judge did not give the Jurors any rebuke for it.

176 ANonymus, The husband discontinued the land of his wife she joyning and being present, and it was held her entrie to be lawfull, but the Case here was that after her death her heir did enter, &

seal

the Leaſe in queſtion, and the Jury nd againſt his Leſſee that his entrie was awfull, and not within the Statute of *H.* 8. See the Statute, for it hath the rd heir, ſo it ſeems the Law was miſta- n in the direction and verdict.

Maior of *Beverleys Caſe.*

THe queſtion was about the execu- tion of a *Fieri facias*, whether it ll be ſaid fully executed by the Officers ing goods into his hands in execution, not till praiſer of them &c. or ſale, See me *Hoes Caſe* 5 *Rep.* and Caſe *Sara- wdeſley*, where it ſeems a good execution fore Praiſer, &c. 2 Point was, that af- r ſeiſure and before any thing done a *Su- perſedeas* came to the Sheriffe &c. and the oods were demanded to be redelivered, nd becauſe they were not, an action of rover was brought, and held this Action eth not, nor though the *Superſedeas* had ome in time, for when the *Fieri facias* is xecuted he hath the goods by courſe of aw *ergo*. *Quare hoc.*

Benſon againſt *Cook.*

THe Caſe was, a Reverſioner upon a lees for years granted by deed

ber

authority to cut timber, ſee of what ſo this is, and if the grantee may execute t authority by another, as here in this Caſe did, a ſpeciall verdict was directed.

Irelands Caſe.

179 AN Action of Debt againſt two e ecutors, and *plene adminiſtrav* pleaded, an Inventory had been exhibi by one of them, and it was holden the ther ſhall not be obliged by it, but th Plaintiffe ought to prove that he hath actually adminiſtred, and that goods cam to his hands, and ſo give him a charge b cauſe he was but executor here of his o wrong, and becauſe the Plaintiffe cou not prove this, he was nonſuited.

Dentons Caſe.

180 IN Debt againſt an heir, and land de ſcended to him of the value of tw thouſand pounds, but he did morgage before the writ brought, and pleaded *riens per* diſcent in fee, &c. but the mo ny borrowed was onely four hundred pounds, but the whole fee was eſtated then after the writ he took more mony up on it, and it was holden this was no fraud, and the iſſue ought to be found for the De fendant, and ſo it was.

Hodgſons

Hodgsons Case.

IT was holden that lands which come to the Templers or others privileged m tithes by the Councell of Lateran af- this Councell by purchase or escheat, ll not partake of such privilege, but ds then in Lees or Copihold, when the se endeth after the Councell or Copi- ld comes to the Lord it shall be privile- d as those then in their hands should be.

Burdet against *Mathewman.*

IT was holden upon an evidence, that the Lord gaineth no property in an ray till the year and day be past &c. nor he maintain an Action of Trespasse for king such Estray from him, in the interim or he cannot say *Quare ovem suam cepit* ll the year expired, &c. but he may main- ain a special Action upon his Case for such king. *Quod nota.*

Elias Hansons Case.

AGreed the generall issue in a Re- plevin for goods taken is *Non cepit* this for an Officer to plead or others.

Brade-

Brodebent against *Chadwick.*

184 IN Trespasse, the place where in common field, in a place called two furlongs, this is good without talls, which are dangerous to prove, if abuttalls be in such a Case as this of or two sides the parcell of ground it is cient to describe the place, and here witnesse spake to the Trespasse, and ther to the place, but did not know the buttalls, and the other knew those, but that it was the Plaintiffs land, this doth make a perfect evidence, and it was direct to be the best in such a Case as this for to go to the land before, and he that the Trespasse to shew the place to the who knows the Abuttalls.

Collonel *Birches Case.*

185 AN Action of false imprisonment was layed in the County of York, but upon the evidence it appeared to be in Darby-shire, and both Plaintifs and Defendants Officers of the Parliament, and for this cause the Judge ruled it upon the Statute of the second December last, that it ought to be tryed in the proper County, albe-

the Act is but by colour of the Par-
ents authority, and not revere, and
gh an order of the Kings Bench was in
Case to try it in Yorkshire, this shall
no validity where it is against the law,
rwise if it had been by consent of both
ies, yet see by me that consent of par-
hall not change the Law.

March 24 *Car. Turner* Serjeant Judge.

Booth against *Jenkenson.*

IN an Action of battery, and *son assault demesne* pleaded, and the De-
dant proved the Plaintiffe struck him
t, then the Plaintiffe shewed in evidence
t the Defendant struck his horse, which
s drawing in the Cart first to have stop-
d him for passing the Defendant being
gh Constable, and the plague then being
Pomfret from whence the Plaintiffe
me, and it was ruled by the Judg that this
d been a good matter of justification if
e Defendant being an Officer had pleaded
ot guilty, but not upon this particular
lea and issue, that it was of the Plaintiffs
wn assault, for this striking the horse
such an assault upon the Plaintiffs goods.

as he might justifie the striking the Defendant again, & the stopping the horse is stopping the Plaintiffe himself, and so directed to find this issue against the Defendant.

Hardcastle against Lockwood.

187 IN Action of battery, which was laid in the Declaration to be the 18 of February 1621, Defendant did plead *son assault demesne* &c. and at issue upon that and Defendant proved an assault by the Plaintiffe, but another day, and ruled that this doth not prove this issue for the Defendant, because the justification shall refer to the time layed in the Declaration if the Defendant do not difference the time in his plea, and in such Case where the Defendant intends to shew the assault was at another day or place, he shall shew that such a day before that in the Declaration as here 8 Feb. the Plaintiffe did him assault, and would have beaten him and traverse the day in the Declaration: but see in the Case of an Officer, who is not tyed up to speciall pleading, it seems he upon not guilty may varie in his evidence to justifie from the time in the Declaration, &c. *Quod nota.* And the prejudice may come to

to the Plaintiffes being unprovided perhaps in such Case to a reply, whereas when the matter is by pleading brought to a speciall issue he knows his work, &c.

Wells against *Clough*. Wells & Clough

188 COpihold land was estated in tail by husband and wife, and after they joyned in a Feoffement so to give cause of seisure, which was done accordingly, and granted away in fee, and the question was, whether the joyning of the wife shall give a forfeture to binde the land as in Case of waste it will, and a speciall verdict was in this Case.

Beverleys Case. Beverley's Case

189 TWo Jointenants are of a Lees for years, and one bid the other goe out of the house, and he did so accordingly, and it was held this was an actuall ejectment, of which an *Ejectione firme* will lie, as well as if he had thrust him out by force. *Quod nota*. And see hereafter a like Case.

Hargraves Case. Hargrave's Case

190 THe Plaintiffe declared that the Defendant in consideration the Plaintiffe would forbear suit against *I. S.* for eighty

eighty pounds which *I. S.* did owe him, th
Defendant would see him payed, and th
evidence proved that *I. S.* did owe th
Plaintiffe onely forty pounds, and holde
that is againſt the Plaintiffe.

Reckwith againſt *Elſey.*

191 IN an Action of Trover and Conver
ſion, and nothing proved but a tort
ous taking of the Cattle by way of Tre
paſſe, and driving them away, and it wa
ruled a good ground for this preſent Acti
on, and a converſion ſhall be intended, o
therwiſe when he comes to them by Tro
ver there an actuall Converſion ſhall be
proved.

192 IT was holden that an entrie by a
Gardian for an Infant, and demiſing
the land is not good without the Infants
ſpeciall authority, See becauſe for his good.

Sots Caſe.

193 IN Debt upon a Bond againſt an exe-
cutor, who pleads *plene adminiſtra-
vit*, and gave in evidence bonds cancelled
and taken in, or acquittances for mony, this
held not good without proof of reall pay-
ments made or new ſecurity given, &c.

Mar

Markenfields Case.

194 A Letter of Attorny was produced to demiſe tithes in Munkton, and the leaſe was made by this Attorny by the name of all the tithes, &c. of Biſhops Munkton, which was the uſuall known name of the place, and being agreed at the bar to be the ſame land, it was holden a good demiſe and purſuit of authority; *Quod nota*, by matter dehors, and Jury directed to find accordingly.

Metcalfes Case.

195 ONe takes my goods and ſaies they are his, and ruled Trover and Converſion well maintainable for this treſpaſſe, &c.

196 ANonymus. It was now ruled upon proof of the Caſe in treſpaſſe againſt a Conſtable, that if Souldiers doe come to ſuch an Officer and compell him to goe with them to take ſuch corn or goods of *I. S.* who thereupon goes, and the goods &c. are taken he being preſent, but doing nothing, he ſhall not be guilty in this Caſe of their treſpaſſe, *Quod nota*, but the

the compulsion must be proved, and the force used to him.

197 ANother Constable was sued in Tresspasse and false imprisonment and the Case was, he executed a warrant involuntarily made by Sir *Francis Worthy* being in armes against the Parliament and the party was brought before Sir *Francis* being a Colonel for the King, who used him savagely, as he did many other honest men, putting some into drawn wells, &c. It was holden here, that this Constable shall be onely charged with the arrest, and not with the subsequent bad usage of the prisoner, and so he escaped with dammages of five pounds, where the bad usage if he should be charged with that deserved a hundred pounds dammages upon the cruel usage of this Cavilleer.

Assisa August 1647. *Green* Serjeant at Law Judge.

198 IN *assumpsit* for ten pounds due for corn sold to four men, and the evidence proved the sale to be made onely to two, this was holden against the Plaintiffe that he did not prove his Case.

199 ANother Action of *assumpsit* for mony due, and laid it in his Declaration to be payable upon requeſt, and by his witneſs it did appear that a fortnights time was given for the payment of it, and though this fortnights time was paſt long before this Action brought, yet now it was held a failer in the proof of the Plaintiffe of his Caſe as he had layed it.

200 IN Treſpaſſe againſt *A.* one *B* was admitted to witneſſe againſt him, though by his own confeſſion he was a joint treſpaſſor, and by this oath did caſt the dammages upon his companion and ſo freed himſelf in a manner.

201 *A* deviſed all his reverſion and title in the Manor of *D* to *I.S.* the land being in Lees, and it was doubted if the Fee ſhall paſſe as it doth where a deviſe is of all his inheritance, &c.

Eaſtburnes Caſe.

202 IF one is a hired ſervant though but by the week onely as here it was to be a banks man in a coalepit, if he is taken away and impriſoned by which the Maſter doth loſe his ſervice, this is actionable

though he was not hired according to the Statute of 5 *Eliz.*

Vernats Case.

203 HE was sued as executor of his own wrong, and it appeared upon the evidence that he had entred upon land leased to the Intestate, and did receive the profits, and he was sued for the rent by the Lessor of the Intestate, and this Case was found specially for that the Defendnts Counsell insisted upon it, that he was a disseisor iu this Case, and did not administer this term as an executor of his own wrong, which seemeth no law, no more then being a trespassor, as he is that taketh away the goods of the Testator shall excuse him, &c.

204 MEmorandum. One Mr *Guye Faux* of the Parish of Leathley, a Cavilleer, had a cause heard about a plunder, upon Munday this week after dinner, and was well in Court, and dammage against him a hundred pounds, and he was found dead next morning upon the conceit of it, as was supposed.

Sir

Sir *Ashtons Case.*

205 THe Action was upon the Statute of *Wincheſter* for a robbery againſt the inhabitants of the hundred of Staincroſs and Ewclif, which is a double hundred there, as Agbrig and Morley, Strafford & Tickel are, and becauſe ſome doubt was if the Hundreth in queſtion was one or two Hundreds, but commonly it's taken but one in all aſſeſſements, &c. and if two it would alter the Caſe much, for then a more diſtinct place for the robbery muſt be, &c. to diſcern in which of the hundreds this robbery was committed, &c. a Juror was withdrawn by conſent.

Walter againſt *Portington.*

206 IN Action of accompt againſt the Defendant, he had been a peſtilent Cavilleer and plunderer in this County, and this Action was for receiving the Plaintiffs rents, and the Defendants Counſell ſtood upon it, the Action would not lie becauſe he took theſe rents as his own, as a diſſeiſor, &c. in which Caſe Debt lies, &c. and not accompts, ſee *Fitz. N. B.* 116. *q.* ſeems to agree, and as I take it the Caſe now was found ſpecially.

Aſſiſa March 1647. before *Germine* one of the Judges of the Kings Bench.

Sir *Arthur Ingrams Caſe.*

207 THe iſſue being upon the Condition of the bond, to pay mony at *Haxbies* tombe in the Minſter of York, and payment at the day being pleaded, it was urged by the Defendants Counſell now that this iſſue could not now be tryed, becauſe it appeareth to ariſe from a place in another County, for this tomb was within the County of the City, but becauſe this matter did not appear within the Record, and the Defendant made default and failed to prove the payment, &c. It was ruled no exception and verdict for the Plaintiffe.

Clarkes Caſe.

208 UPon the evidence the Caſe was, that the one Defendant bought twenty ſheep for ſeven pounds ten ſhillings and four pence was payed in hand as part of the mony; called in this Country, earneſt, and the bargainee was to have them if he liked them, or give notice to the contrary within two hours, and the Defendant took the ſheep with him to his houſe out of the

Paſture

Paſture, and at night brought them back again, but no other notice was proved of his refuſall, and after the ſheep were taken away by plunderers, and the Jury found for the Plaintiffe, who ſued for the whole money due upon this bargain, not abating the four pence, and the Judg was of opinion that the Defendant who bought theſe ſheep was at liberty, and free of this bargain by the returning of them again to the party as aboveſaid, and yet the Jury found for the Plaintiffe againſt this opinion of law by the Judg delivered.

Whiteacres Caſe.

209 EJectment was of lands in Oxenhope and the witneſſes upon examination did ſwear there were two Oxenhopes, upper and nether, and none without addition, and upon this the Plaintiffe was nonſuited.

210 ANonymus. Debt upon a bond and it did appear the Defendant and another were bound joyntly in this obligation, and it was ruled that though the other obligor be dead, yet the Plaintiffe hath failed in his Declaration, and if *Non eſt factum* be pleaded and this bond produced it ſhall be againſt the Plaintiffe. See by

me, if other issue be as payment at the day or the like, it seems then the other matter out of doores and will be well enough.

Greis Case.

211 IF my Father and another are combating, and the sonne come in aid of his Father and strike the other, this was held justifiable though the Father began the affrey, but *Quære* of that, but so it's holden but here the other party did begin upon the Father, therefore here it was held clearly justifiable.

Goodricks Case.

212 IN a Replevin the Defendant did avow by a grant of a rent charge out of the lands in question by the Lord *Evers*, and *ne grant pas* was pleaded, and at issue upon that, and it was proved the hand and seal of the Lord *Evers* by three persons, and the witnesses indorsed were all dead, and this kind of proof was admitted, then it was urged for the Plaintiffe that it is no grant if proof is not made that the Lord *Grantor* was seised of the land, out of which the Rent is granted at the time of this grant: but the Judg did direct the Jury to beleeve that in Case of a person of honour that he would

would not charge lands he had nothing in, &c. and if the grant of the rent be by Indenture the like ſhall be taken in every common perſons Caſe, and the other ſide ſhall be put to prove the land was ſold away before or the like, if he will avoid the grant.

Grice againſt *Beamont.*

213 TReſpaſſe brought by five coheirs, and it was objected that the Father of one of the Plaintiffs was alive, *ſ.* one *Wilſons* Father, who did joyn in this Action, but anſwer was made that the land came by his mother who is dead, therefore he being her ſon and heir who was ſiſter to the other Plaintiffs may well joyn in this Action with his Aunts: but it was holden that if this Action had been ill brought in reſpect of any one of the Plaintiffs, all muſt have been nonſuited being a perſonall Action. And note, in this Caſe it was held that a Fine ſhewed in evidence, and proof of the purchaſe mony payed is good evidence that the eſtate was paſſed accordingly, albeit the deed of uſes is loſt, &c. *Quod nota.*

Rook-

Rookeby his *Case.*

214 IN Action of Trover, &c. And to prove the Conversion it was offered that the Plaintiffe did demand satisfaction for the corn, and it was ruled good evidence, the demand being to the party himself who took this corn, though the corn it self was not demanded, but satisfaction, *Quod nota.*

Coldwells Case.

215 AN Executor brings Trover of goods taken from his Testator by a Trespassor. It was held the executor must first make a demand of the Trespassor before he can bring this Action, and note where trespasse is done, it is at the election of the owner to affirm the property in himself by this Action of Trover or dis-affirm it by an Action of Trespasse, and note out of this opinion that the election in this Case doth survive to the executors.

216 ANonymus. An Action was upon the Statute of Northampton upon a robbery committed, and forty six Jurors were returned, which was more then by law ought to be returned, but the tryall for all that did proceed, & that was left to be mov'd

above

ove, then the Plaintiffe here had not the
it nor a true copie of it proved to shew
hen this Action was commenced, which
necessary, so that it may appear if the ex-
ination before the Justice of Peace was
ken in due time as the Statute doth ap-
oint, and it was not admitted to be pro-
ed by oath, either of these matters, because
ey are matters of Record, and for this the
ction was stayed.

217 IT was now ruled again that an Acti-
on of Trover doth not lie against a
Carrier if he do not deliver the goods re-
ceived, but an Action upon the Case speci-
ll upon the matter.

218 A Lees of two acres in *D* and *S*, if
the land lyeth in either of the
towns it is sufficient, and it is not necessary
it lie in both, though the Declaration say
so, but if the Lease was sealed in *D*, and the
land in which the Ejectment is, lyeth in *S*.
this is not good.

Topham against *Brown*.

219 IN Debt against the Defendant as ex-
ecutor of Mr *Thomas Frankline*, who
hath by his will devised trees to be sold, and
also

alſo deviſed other land to be leaſed for p ment of his debts, and at this time the viſor was jointenant with another whom had truſted and then dies, the Defenda ſells the things ſo deviſed, and it was rul this ſhall be aſſets in Law, and the Ju found accordingly for the Plaintiffe.

Morris his *Caſe.*

220 IN debt againſt an executor, wh pleaded three ſeverall judgement for a hundred pounds each judgement, an that he hath not beſide thoſe judgement twenty pounds in his hands &c. the Plain tiffe replyed that thoſe judgements wer ſatisfied and holden on foot by fraud, &c and did demand judgement, &c. the De fendant did rejoyn that the judgement were unpayed and traverſed without that, they were kept on foot by fraud, and the e vidence for the firſt judgement was a de cree before the Councell at York which was payed, for the ſecond the witneſſe proved that ſome part of the mony was be hind, but the Creditor did expect no more, for the third judgement no evidence was, and direction to find for the Plaintiffe, and this rule given, that if the Defendant fail in proof, that any of the Judgements appear

be satisfied the issue is against him, ough the rest were unsatisfied.

21 FIne of six messuages in Girlington, which is a *lieu connus*, but no vill, and is Fine was by tenant for life, and now e lease to try the title was sealed in the arish of *G.* which also was the name of e town. See if good.

Dickensons Case.

22 IN debt against three as Executors of their own wrong & it appeared upon e evidence that one of them did never ntermeddle with the goods, but the other wo only, & direction given to find for the laintiffe against the two who did adminiter, and for the third *Nil debet.*

Watsons Case.

23 A Feme Covert bought Tobacco, and the husband was sued for it hough he had made Proclamation that no man should trust her, and no proof was hat it came to the husbands use, or that he wife did use to buy and sell for the husband, and it was ruled that it shall be intended she did so as his servant, and the Judg ook this difference where particular notice

tice is given not to truſt the wife there
the party to whom ſuch notice is do
her, it is at his perill, but not ſo upon
generall notice by the Proclamation abo
ſaid, and in this Caſe it was proved ſhe h
formerly bought and ſold but not lately.

Burnleys Caſe.

224 IN conſpiracy for inditing him of f
lony &c. the Plaintiffe was put
prove the Inditement now ſhewed in ev
dence a true copie, then he was put to pro
what the witneſſe ſwore to the Jurors, wh
did procure them to ſwear and give ſuch e
vidence, and proof was that one *Wilbo*
gave the evidence to the Jury of life an
death, that the Plaintiffe ſtole the goods
&c. but the witneſſe now in Court ſwo
that his oath was the Plaintiffe took them
but not that he ſtole them, it was found fo
the Defendant, *ut credo.*

Ward againſt *Waddington.*

225 IN waſt, a Declaration was that th
Defendant Leſſee did ſell the tree
&c. and this was held not good witho
ſaying he cut them down, &c. 2 Point, there
was a Condition not to do waſt, and it wa
ruled this condition doth extend to the Aſ-
ſign

signee, without naming him as inherent to the land.

226 IN an Action upon the Statute of 2 *E.* 6. the Case was, an inclosure was Part of the wasts, and it was turned into a pasture, and holden that albeit it was of petty value, *s.* two shillings by the year, and never sown or turned [into meddow, yet this shall pay tithes, and the very inclosure is an improvement, and it is no wast ground within the Statute to be freed from tithes for a time, &c.

Walkers Case.

227 *A* Puts his beasts to agist with *B*, and after the time expired *A* demands his cattle of *B*, and cannot have them delivered, it was holden here in this Action which was Trover and Conversion brought by *A*, that this Action doth not lye because the Defendant came to them by the Plaintiffs own delivery.

Mr. *Hillaries Case.*

228 ACtion upon the Case for stopping a Way, and the declaration was said to be a Way, *in, per et trans januam*, &c, and holden absurd that carriages here pre-

prescribed to come this Way by horses and Carts should goe *trans januam*, which as the Judge said was over the gate, and upon this opinion the Plaintiffe was nonsuited. See by me, for the word *trans* signifies as well beyond or on the other side, as over.

Assisa March 1648. before *Thorpe* Serjeant at Law, Judge of Assise

The Lady *Bolls* against *Ellis*.

229 IN debt upon the Statute of 2 *E.* 6. for not setting forth tithes, and demanded two hundred pounds the treble value of an hundred marks the very value of the tithes, the year laid in the delaration, and in this Case the Defendant pleaded a discharg upon the Statute of 31 *H.* 8. and took no protestation of the value of the tithes, that it was other then in the declaration, &c. and this was a mischief to him, for it was held now that the value is admitted to be as it is layed in the declaration, & so cannot now come in proof; but note in the upper Bench in Easter tearm before, the whole Court was of opinion that the Jury must give the whole value as is laid by the Plaintif in his declaration, and the Jury did find

there

re accordingly, yet at the Assises in this ase it was left to the Jurors to apportion e dammages, and the value of the corn e year the Plaintiffe complains on that the was not set forth.

Childs Case.

30 ACtion of debt for severall things, and it was summed up *in toto* twen- y pounds and it was for wares sold in seve- ll years, in this Case if it appear that part as due so many years agoe as the Statute f limitations barres the Plaintiffe of his ction, or if he fail in proof for part of the ebt, it was questioned if the Plaintiffe shall ecover for the residue, but if it had been n *assumpsit* brought he may recover for art, because dammages there onely are, nd are divisible, and so it seems here being joint Action, but upon severall Contracts, s where debt is upon two Bills &c. or for ent upon severall leases, the law is other- wise then where it is upon an intire Con- ract and he fail in part, &c.

31 INdebt upon a lease, defendant plead- ed payment, & in evidence shewed he payed it to Sequestrators of the Common- wealth the Plaintiffe being a Delinquent,

and ruled this was good payment to prove the issue, which was a payment to the Plaintiffe himself.

232 ANonymus, Action for words, one said to the Plaintiffe that he was a thief and had cousened the State, he being then a Sequestrator, and it was holden the Action lies for the first words, and the subsequent words shall be taken an additional slander, and not explanatory of the word thief, so to mitigate the force of that word and make it no slander.

Mistresse *Benson* against *Dawson*.

233 CHallenge was to the array because two Hundredors did not appear upon the Jury now at the Barre though two were returned in the pannell by the Sheriffe, and it was now allowed a good challenge, but the Judg said he will not do it again, for this will overthrow most of the tryalls, now the Statute is 27 *Eliz.* that in personall actions further challenge for the Hundred be not if two sufficient Hundredors do appear at the tryall, so that if two do not appear, the party is left to his challenge, because six Hundredors are not returned upon the pannell, but not as here

134 IN Trover and Conversion issue was joyned that the Horse in question was bought at Dale in the County of York in open market there, but the evidence was that it was bought at S. in Lancashire, and it was holden that this did not prove the issue, and that as this is pleaded, the place is materiall, where upon a generall issue it had not been so. *Nota.*

135 IN Ejectment where an actuall outer is necessary, as in Case of Joynt-tenants, &c. there hard words, as to bid him be gone by one of them to the other will not serve as the Judge now directed, see after here.

136 IT was holden if the Indenture of lease be given up to the Lessor, and accepted by him, this is a surrender in law.

137 EJectment. The Lease and declaration thereupon did differ in the number of acres, and it was held not good, as if the lease was of forty acres, and Plaintiffe declares *Quod cum dimisisset* twenty acres of which perhaps the Ejectment were was, and of no more, yet it was held not good. *Quere* by me if it may not be good,

good, becauſe *Magis continet minus*, but clearly the Ejectment may be of leſſe number as the truth ſhall be.

Aſſiſa Auguſt 1649. before *Thorpe* Judge of Aſſiſe.

Barſtoe againſt *Anderſon.*

238 ISſue in debt was *Nil debet*, and thirty nine ſhillings proved for wares ſold, but no evidence for the ten ſhillings lent, &c. which was put in to make the ſum forty ſhillings, ſo to bring it within the Cogniſance of the Courts of Weſtminſter, which was held good in this Caſe, and note ſo it hath been held long, but ſee *Coke* upon *Magna Charta* holds it a deceit to the Statute, and ſo a crime, and alſo that ſuch matter may be ſhewed to arreſt the judgement as it ſeems.

Sir *Michael Whartons Caſe.*

239 DEbt againſt an heir, and nothing by diſcent in fee ſimple was pleaded, and in evidence the heir ſhewed the land was conveyed to *A*, but it appeared that the livery upon this deed of Feoffement was made onely in part of the land com-

compriſed in the name of all, whereas ſeverall tenants did dwell in and upon the other parcels, and the Judg put the Defendant to prove thoſe other tenants had no eſtates in the tenements they lived in at the time of the livery, ſo to make the livery to be effectuall, for otherwiſe he ſaid he would preſume they had eſtates, ſo to hinder the livery in thoſe parcels, and ſo there will be aſſets if this eſtate made by the heir before this writ brought ſhall not be well executed.

Iackſon againſt *Dickenſon.*

240 THe Caſe was thus, *A* deſired *B* to lend *C* forty pounds, who lent this accordingly, and *A* did repay to *B* the forty pounds ſo lent, and then *A* brought an Action againſt *C* in his own name for this mony, and the Judge held the Action did well lie, as lent by himſelf.

Linley againſt *Baxter.*

241 IN treſpaſſe for beating his ſervant, it was holden not neceſſary that he be a hired ſervant, as the Statute of 5 *Eliz.* declares &c. to have this Action, but if hired for any time certain, it ſufficeth, and by Serjeant *Widrington*, it was ſaid, a man

may be ſaid a hired ſervant within that Statute though the hiring be leſſe time then a year, and note the ſervant in the Caſe at the Bar was onely to help to load corn, and was not in the Plaintiffs houſe entertained, but went to his own houſe every night, and holden the Action not maintenable for beating ſuch a ſervant, ſee if hired for a week and lodge in the Maſters houſe, and ſee of daytale labourers, &c.

Iennings againſt *Ingerſon.*

242 DEbt for rent, and the Plaintiffs title was by a leaſe of a greater tearm and Defendant an under leſſee, and Plaintiffe had this leaſe as Executrix to her husband, and this rent was grown due after the husband dyed, and yet brought in the *Detinet tantum*, and ſo it was held it ought to be, it appeared the letters teſtamentary in this Caſe, were taken from the Biſhops Commiſſary after the Ordinance which diſſolved the Biſhops, &c. and for this cauſe it was againſt the Plaintiffe, ſee becauſe the Defendant did not except to it upon ſight of the Letters teſtamentary, which he hath at the commencement of the ſuit, but pleaded in chief if that be not admitted good, and ſhall not now be objected.

Willy

Wilby against *Bower*.

243 THe Plaintiffe did deliver his horse to be kept at grasse, and the Defendant took him away from the pasture, &c. and the Plaintiffe brought trespasse, and the Judge overruled it that the Action would not lie in this Case, because the horse was in the possession of another, which was against my opinion being of Counsell with the Plaintiffe, because the Action is transitory, and he is in the owners possession every where, and if I give my horse in London to *I. S.* I being then at York, he may have trespasse without other possession. *F.N.B.* 140. *Perkins* 30. 21 *E.* 4. 25. 21 *H.* 7. 39. 21 *H.* 6. 43.

Armitage against *Thewless* and others.

Ejectment.

244 THere had been judgement against one of the Defendants by *nihil dicit* in the Court above, and now the tryall was brought against the other, and now dammages awarded against each of them two pence severally, against him the judgment was as upon a writ of Inquirie and against the other as a verdict upon a tryall, &c.

Dickensons Case.

245 ACtion for words that the Defendant called him bankrupt, and the evidence was bankrupt rogue, and it was ruled this doth not maintain the declaration, nor are these words actionable, for the weight of this slander lies upon the word Rogue, which is the Substantive and not the other which is the Adjective.

Hollings against *Wrather.*

245 AN Action upon the Statute of 5 *Eliz.* 9. for not appearing as a witnesse, &c. and Plaintiffe did declare that the Defendant was served with a *Subpœna* to apppear &c. & shewed the Record of the action then depending, & note the *subpœna* for this purpose is alwaies to appear the first day of the Assises, and here he was served that first day and not before, but the tryall was not till three daies after, and the witnesse against whom the Action now is did dwel in the City of York so near at hand, and therefore lesse warning necessary, yet it was ruled no good service, because the writ was not served before the Assises began, for it was said the cause might have come to the tryall the very first day, yet *de facto* it cannot be for the County, as this tryall was, because the Judges sit

sit in the Guild-hall for the City that day; *Quod nota per totum.*

Whitleys Case.

247 TRespasse for taking a distress which was for a Parliament assessement, and in evidence the Roll of the taxe was shewed, and nothing was upon the head of it for what this assessement was, but onely the names of the inhabitants written in a Roll thus, *A* tenne shillings, *B* five shillings, &c. and this was held not good, but it should mention for what the parties were assessed, *s.* so many acres of land, so much goods, &c. and for what service the assessement was, as for the monethly taxe, &c. and every assessement ought to have its proper intitling, for bridges, Constables ley, &c.

Brooks against *Foxcroft.*

248 A Lees is by three men by Indenture and one of them hath nothing in the land and the two which had the estate bring the Action alone without the third man, and it was now ruled well brought because nothing passeth from the other, but shall be onely as a Confirmation, and in this Case a Will under Seal was rejected as evi-

evidence for land without shewing the originall Will or true copie.

Bernard against *Simpson*.

249 DEbt against an heir upon a bond, and *riens per discent* in fee pleaded, &c. and upon the evidence the Case was, the land was Copihold, and by the ancestor an enfranchisement of it was procured of the Lord, and the freehold bought in &c. but the Copihold was intailed long before, and by custome such intails had been &c. within the Manor of Leeds where &c. and whether this intail shall free the issue, for so the heir here was, or that the Copihold shall be so extinguished by this purchase that it be wholly swallowed up, and that no use can be made by the issue of this old intail was the question, and I thought the issue might make use of the intail, but this question was out of doores by another evidence given by the Plaintiffe, that the Defendant had a little quillet of other land granted to him by the Lord which was part of the waste in fee, and for this he was charged with the whole debt, being a hundred pounds, and the quillet of land &c. not worth five pounds.

Sir

Sir *Thomas Gower* against *Wilkinson.*

350 THe Plaintiffe had taken a distresse for rent, and the Defendant promised if he would redeliver it to him, he would pay the summe demanded for rent, the distresse was delivered, and now he sued for the mony upon the promise, and the Plaintif in this Case was put to prove there was rent due, &c. *Nota*, for I did doubt because the Defendant hath benefit by redelivery of the distresse, &c. *ergo.*

Newsoms Case.

351 THe Case upon the evidence was thus, the Defendant had a legacy given him by the will of *I. S.* of a larger assise then the Plaintiffe did like of, and the Defendant in consideration the Plaintiffe would forbear to move the testator to make an alteration of his Will, did promise the Plaintiffe ten pounds, and he averred he did forbear, &c. and did aver the Testator had goods to the value of an hundred pounds, and he was constrained to prove this, as part of his Case, *Quod nota*, though it be greater summe averred then needed.

Tres-

252 TRespasse. *Quare clausum fregit* &c. and the declaration was three closes *A B* and *C* broken, and this was in the new assignment, and this was ruled ill and is beyond that which the Writ warranteth being *clausum* in the singular number, or if the declaration be *clausum* and new assignment is three closes broken, this is not good.

253 LEes of Ejectment was by *A* and *B*, whereas *B* had nothing in the land, and *A* did declare of a lees by himself alone, and though it was a Lease by indenture, it was held a good declaration, for the Estoppell holds onely between the parties. See *Coke Lit.* 144.

Soresbies Case.

254 THe Case was, a distresse is taken by virtue of an Ordinance of Parliament which gives authority to sell it, it was resolved this law shall be intended of lawfull distresses, and doth not make things distrainable that were not before, nor yet gives liberty for the time to take a distresse which the law did not warrant, as in the night in some Cases, &c.

Fawlkner

Fawlkner against *Bramly*.

255 EJectment; and declare of a lease of twelve acres arable, twelve of medow, and twelve of pasture, and in truth he lease was but of tenne in all, and my lf was of Counsell in this Case for the Plaintiffe, and told him I thought it was ot good, and Sir *Thomas Widdrington* afterward agreed with me, and so our Clyent withdrew his Record.

Walker against *Dawson*.

256 TRespass. It was laid 1 May, and a *continuando* was laid &c. and the Plaintiffe could not prove the first Trespass though the *diversis vicibus* after, he could prove, and for this Cause he was nonsuite; the first Trespasse is the main.

257 AT these Assises *Iohn Marris*, who surprised Pomfret Castle, then held for the Parliament, was indited, and now arraigned for high Treason, for levying war against the King, (though note he was of the Kings party) and the proof was, that he armed men & went out in the head of them, and sent out severall parties of souldiers from the Castle to fight with the Parliaments souldiers, and by both

Judges

Judges *Thorpe* and *Pulliston* this was holden levying war within the Statute of 25 E. 3. and he was found thereof guilty, and had judgement and was executed as a Traitor.

March 1650. Baron *Thorpe* and Baron *Rigby* Judges, and *Rigby* sate upon the *Nisi Prius*.

Hall against *Cook*.

258 THe Plaintiffs beasts did escape into the yard of the Defendant, and he shut them in, and refused to deliver them to the Plaintiffe being demanded, and it was holden the Action did lie in this Case, because there had been a dispute before about the property of them in the publick street, and from thence they escaped, otherwise it seems it was lawfull for the Defendant to detain them.

Nelthrop against *Johnson*.

259 IN this Case part of a long Patent was copied out, and sworn true, and it was so much of it as did concern the thing in question, and the Counsell of the other part did oppose this to be evidence, and

and the Judg did in the end reject it by parcels shewed, for that there may be provisoes &c. in the Patent, and the witnesse could not swear he did read the Roll throughout of this Patent, so that no more was in it then now shewed, *Quod nota*, if he could, it seems it had been admitted.

Ienkinson against *Porne*.

260 IN *Assumpsit* for wares sold, and it appeared upon the evidence that part of the wares were delivered after the time in the declaration mentioned, yet the Plaintiffe did recover for the residue, see by me in these actions for divers wares sold, where the parcels do not appear in the declaration how the Defendant in another Action brought for the same shall defend himself, and it seems he shal plead this recovery and aver it to be for the same wares formerly sued for, and then give in evidence in this second Action that proof and evidence given by the Plaintiffe in the first, for therein the Plaintiffe doth and ought to prove the parcels sold in particular which are laid generally in the declaration, and by that means it will appear to be the same, &c.

Lang-

Langstaffe against *Thomson.*

261 EJectment. The Case was, that at the time of the lees delivered upon the house in question there were then servants in it, but the Master did come in afterward the same day, and though the servants were the first that kept the possession after the Lease sealed, yet this Action was ruled maintainable against whom it was brought in this Case, but otherwise it had been if he had not come in till the next day, and upon this a Juror was withdrawn.

Between the same persons.

262 AN Action of trespasse came to tryall, in which an endeavour was to recover the mean profits, and the Trespasse was layed 17 Feb. with a *continuando*, &c. and the first entrie was before this 17 day, and it was of the same land the Ejectment was brought, and because a second entrie is required to recover the mean profits, the which if it shall be will happen after that time which he hath acknowledged himself out of possession by his Action of Ejectment, and such entrie will abate that Action. It was directed to finde dammages for the first entrie onely, and nothing for the continuance. *Harley*

Harley against *Thomson.*

263 THe Case was, that a bargain and sale was *pro diversis considerationibus* generally, and this was admitted in evidence to prove mony revere payed, and if it be payed by one of the bargainees, this is sufficient for all to raise the use unto all See if it is payed to one of the bargainors, if that be not good also.

Linleys Case.

264 IN *assumpsit* for twenty pounds debt upon the evidence it did appear that part of the mony was payed, and the Judg did *hæsitare* if the Plaintiffe had not failed in his whole Case, because the consideration is not as he hath made his Case to be, but after he was satisfied, the Law was otherwise, and gave direction the Plaintif should recover the residue of the mony not payed, but it seems otherwise where the considerations were severall, as for the price of a horse sold to the Defendant, and for mony lent, and one Action for both, there both must be proved there to be due.

Greenwoods Case.

265 IN Ejectment by one Jointenant against another, it was held in the evidence that if one of them offer to strike at the lessee of the other, or push him to get him out of the house in question, this will amount to an actuall ejectment of the moity, &c. albeit the Lessee do abide in the house a little while after such assault, and then depart; but note, words also were used by the Defendant, that he should not stay there which did declare the intent of that assault.

Horsleys Case.

266 IT was the same with *Langstafs* before, but it was further said, that the best way was to name both the Master and the servant in the Action to be the Ejectors, because if it be proved against either of them it is sufficient.

Assisa August 1650. before Baron *Thorpe* Judge of *Nisi prius*.

Poole's Case. Pooles Case.

267 EJectment in two houses in Whitechurch and Halton. It was holden not sufficient to prove the Ejectment in one of the towns, but the Act which makes the Ejectment shall be proved in both, and it is the folly of the Plaintiffe to lay it so. And another Case between *Slack* and *Woodhouse* was ruled so likewise the same Assises, and the like in trespasse laid in *Gilmore* and *Padmore* both shall be proved that was *Thastrosse* Case.

Counteſſe of *Arundells Case.*

268 IN trespasse it appeared upon the evidence that the Defendant had the first possession, and then an entry by the Plaintiffe the very day of the Trespasse is nothing without a title, but if the Plaintif had had the possession before the Defendant though long before it would be sufficient, and then if the Defendant put him out of possession, trespasse will lie of this putting out without a reentry.

269 COvenant to levie a Fine with Proclamations, which shall be to such uses mentioned in a deed &c. It was holden a Fine without Proclamations will not do it, to raise the uses. See if the Fine mention Proclamations were, but the Proclamations are not shewed, what that will do.

270 IT was holden by this Judge being one of the Barons of the Exchequer, that if issues are lost by Jurors, if any of them die before they are levyed, the officers who have the estreat ought to return such a Juror dead, and not levy those upon his lands or goods for it is a personall charge and dies with him *Quod nota bene* being by one of the Barons of the Exchequer, &c.

Bland against *Tenant.*

271 A *Assumpsit* for the price of a beast, and declares that the agreement was to pay so much as the beast should be worth reasonably, and the witnesse proved the agreement to be that the Defendant would give content for it, and this was ruled good evidence to prove the promise layed

layed, and in common sense the words amount to so much.

Wards Case.

272 A Man grants all trees in such a Close, excepting one plumpe of Oakes being eight in number, and there were nine of them, and the grantee did cut them all down, and that plump among the rest, and holden the exception aboveſaid not good for the variance, but all did passe, &c.

Fosterd against *Legerd.*

273 A Warrant was from the Shenffe to the Bailies of the liberties of Pomfret, who did execute it, and rescue was made, and the Baily brought the Action against the rescuors to recover dammages, and holden the Baily may have this Action in his own name to recover dammages for this, but he failed in proving it to be a liberty, and for this he was nonsuited, &c. and note he was put to it first to prove the liberty by Records, &c.

Sturdies Case.

274 ACcompt was brought for thirty one pounds, and a reckoning for

twenty pounds proved, and holden that doth not prove the Action, though he proved ten pounds payed, because that was in a generall way, and promiscuously payed, and could not say for what as part of this thirty one pounds, &c.

Snell against *Davis.*

275. THe Defendant was a Vintner in Beverley, and the Plaintiffe sued him for five pounds for selling wine, for not being licensed according to the Statute of *E. 6.* by the Justices of Peace there being a Corporation, and shewed the Defendant did inhabit there, and the Plaintiffe being urged to shew this town to be a Corporation, and it was ruled he need not, because one and the same penalty in such Case, is given within Corporations and without, and Jury found for the Plaintiffe to the value of one Pinte of Wine sold by the Defendant, and to prove the Defendant guilty, it was proved that the daughter of the Defendant did bring in the Wine, and did receive mony for it. And this was held good evidence that the Defendant himself sold the wine, without proof that the mony came to his hand, or that it was his wine &c.

Strafford against *Pell.*

276 IT was holden that an Action of Trover doth not lie against a Carrier if the goods be not delivered to the owner upon demand, for this Declaration is of a Trover, and supposeth a losing the goods, where the Carrier hath them by delivery.

Sir *Richard Pilkintons Case.*

277 TRespasse for entrie into his Close cutting wood, and carrying this away, it was holden that these severall trespasses shall upon the evidence be proved done all at one time, for if another day, &c. it be fetched away, it is *lignum* not *arbor* or *boscus*. 2. The Case was that *A* grants such a spring wood in *W.* acre to *B*, and before this is cut down by *B*, *C* cuts down a tree. It was holden upon this evidence that *B* in this Case cannot maintain an Action of trespasse for cutting this tree down, because it is not his till cut down growing upon the soil of the grantor. *Nota & quare.*

FINIS.

A

President of CHALLENGE to the Array.

MAy it please you Mr Baron Thorp, *this enquest you ought not to take, for that Sr* John Ramsden *Kt. Sheriffe of the County of York, who did return the pannell between the said* A *Plaintiffe, and* B *Defendant is cosen to the Plaintiff, s. &c. and shew how of kinne, &c. and so where the Challenge is for lack of Hundredors, or other principall Challenge put it down, &c. And this he is ready to averre, whereof he praies judgement, and that the said pannell be quashed.*

Or thus *And now at this day s. &c. comes the aforesaid* I. S. *Plaintiffe and* I. B. *Defendant by their Attornies, and the Furors also impannelled and demanded did come, and thereupon the said* I. B. *doth challenge the Array of the pannell aforesaid, because &c.*

This

This muſt be put in writing, but under Counſels hand; where the Challenge is to the Poles it is in ſhort way by a verball Challenge. See the learning of this is excellent and copious in our books.

A Preſident of a Demurrer upon the evidence.

AND now at this day the ſaid Plaintiffe and Defendant by their Attornies did appear, and the Jury likewiſe did appear and were ſworn, &c. upon which Sir Thomas Widdrington *Serjeant at law of Counſell with the Plaintiffe gave in evidence ſo and ſo, and repeat it truly, and did require the Furors to find for the Plaintiffe. Upon which* I. C. *of Counſell with the Defendant ſaith, that the evidence and allegations aforeſaid alleged were not ſufficient in law to maintain the iſſue joyned for the Plaintiffe: to which the Defendant needeth not nor by the laws of the land is not holden to give any anſwer*

swer, wherefore for default of sufficient evidence in this behalf, the Defendant demands judgement, that the Furors aforesaid of giving their Verdict be discharged &c. and that the Plaintiffe be barred from having a verdict, &c. Then the Plaintiffe joyns and saies that he hath given sufficient matter in evidence, to which the Defendant hath given no answer, &c. and demands judgement, and that the Fury be discharged, and that the Defendant be convicted: then the Fury may give dammages if judgement shall happen to be for the Plaintiffe, &c.

A President of a Plea after the last continuance.

ANd now at this day, &c. comes such a one Defendant by I. C. his Counsell, and saith, this Action the Plaintiffe against the Defendant ought not to maintain, for that after the Quindene of the holy Trinity last past, from which day until

such

such a day in Michaelmas Term next, unlesse the Justices of Assises before come such a day, &c. the Action aforesaid is continued, &c. the Plaintiffe by his deed dated, &c. did relees &c. and shew the matter what it is, whether in abatement in bar dilatory, or peremptory as the Case is, &c. and this he is ready to averre.

How the Judge may overrule this, where he may take a Verdict for all this Plea, how the Plea shall be entred and certified up, and much other excellent matter is about this manner of Plea in our bookes, and fit for the beaupleader.

A Bill of Exception.

Ebor. sc. MEmorandum *that the first day of August an.* 1650 *before* Francis Thorp & Peter Warberton, *Justics the Keepers of the liberties of England, for taking of Assises in the said County assigned*

signed, in a Plea of Trespasse and Ejectment, which I. S. in the Court of the said Keepers before themselves by bill doth prosecute against T. B. supposing by the said bill that the aforesaid T. B. &c. and recite the substance of the Declaration, or what it is &c. and the issue, and then what the evidence to prove the Defendant guilty was, &c. which here was a surrender of a Copihold out of Court, &c. and that he desired the Jury aforesaid to give their verdict for the said T. B. of and upon the premises, and that he likewise desired the Judges aforesaid that they would inform the Jury aforesaid, that the surrender aforsaid out of Court made was good & effectuall in Law, and the aforesaid Justices, the aforesaid surrender of the land aforesaid with the appurtenances made out of Court of the Manor aforesaid, in form aforesaid, did affirm to the said Furors was not good in Law, by which the said Thomas for that the aforesaid matter to the said Furors in evidence shewed doth not appear, &c. did request of the said Justices according to the

form

form of the Statute in such Case provided this present Bill, which doth contain in it the matter aforesaid above by him to the Furors aforesaid shewed, by which the said Justices at the request of the said Thomas *this Bill have sealed at* D. *aforesaid.*

This Bill is to prevent the precipitancy of the Judge, and ought to be allowed in all Courts Baron, &c. and in all the parts of pleading, and may be put in any time before the Jury have given their verdict. *Quod nota.*

FH
MVSEVM
BRITANNICVM

FINIS.